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PATIENT RIGHTS DURING THE COVID-19 PANDEMIC: THE DILEMMA BETWEEN DATA PRIVACY AND TRANSPARENCY IN INDONESIA

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Abstract: The Covid-19 pandemic demands adjustment in transmission control, including data transparency. Indonesia is one country that discloses data regarding vaccines, boosters, and other health information through an integrated application called "Peduli Lindungi". However, this application is prone to data leakage because it uses a Citizen Identity Number to register. At the same time, the application is mandatory for all Indonesians to enter public spaces, especially international flights. This research will illustrate if Indonesia's Government could provide a bridge between patient privacy while providing the necessary data for transmission control purposes. This is normative research using secondary data sources.

Keywords: Covid-19, data privacy, data transparency, Indonesia, medical record confidentiality, patient rights.

SUMMARY: 1. INTRODUCTION. 2. RESEARCH METHOD. 3. RESULT AND DISCUSSION. a. Challenges in Pandemic Era. b. The Protection of Patient's Confidentiality During the Pandemic. c. Socio-Legal Issue: Overcoming Existing Social Stigma Through Strengthening Law Enforcement in Pandemic Era. 4. CONCLUSION.

1. INTRODUCTION

The world is facing a new type of virus (Covid-19), which has become a pandemic worldwide. Data compiled on 30th May 2021 shows that the virus has reached more than 170 million cases worldwide, including Indonesia, with 1,81 million cases and 50.262 deaths (World Metter, 2021). The virus outbreak has urged all parties, including the state government of Indonesia, to reinforce each sector to combat the current problem, especially in strengthening the public health system (Olivia, Gibson, and Nasrudin, 2020). During a global pandemic, society is encouraged to disclose their health condition transparently and accurately to health workers (known as *Tenaga Kesehatan*, or NAKES in Indonesian)

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and to the public. Information disclosure can help health workers address and treat the diseases they suffer. Also, during a pandemic, information disclosure to the broad society acts as notice for the people they have been contacted with and hopefully can encourage their self-tracking efforts (Mark Rothstein, 2020). Likewise, it helps the Government track the virus and ultimately = conduct preventive measures and immediate treatment to deal with the virus down to the roots.

However, the fact showed that many Covid-19 patients in Indonesia often refused to disclose their condition due to social stigma, which caused them to feel excluded and distinct from the surrounding society (Sari *et al.*, 2021). One example is taken from the case of Muhammad Rizieq Shihab (MRS), an ex-leader of the Islamic Defender Front (FPI). They refused to disclose his swab test result even though he received a positive status for Covid-19 after holding a crowded event that violated health protocols (Endri Kurniawati, 2020). His action is considered irresponsible; recognizing the large number of participants who attended can potentially carry the virus and spread it in their surrounding environment.

Aziz Yanuar, Deputy General Secretary of FPI, stated that patient privacy was why MRS's swab test was not disclosed. Patient privacy is outlined under Article 57 of Law Number 36 of 2009 concerning Health and Regulation of the Minister of Health of the Republic of Indonesia Number 269/MENKES/PER/III/2008 concerning Medical Records. In these provisions, the medical record is the patient's property and can only be used with the patient's written consent (Siringoringo, Hendrawati, and Suharto, 2017). However, this legal basis was revoked by the Indonesian Hospital Association Health Insurance Compartment, dr Daniel Wibowo. He stated that the regulations are only relevant to regular times, not during a pandemic. He further stated that medical records were deemed to be disclosed for tracing purposes. His narrative aligns with the theory that the state of emergency will apply in "irregular" conditions. In a state of emergency, both law mechanism and substance will adjust to legal requirements needed at that time. Emergency laws often shift and might regularly contradict existing laws (Nuh, 2011).

The challenge during the global pandemic is the necessity of public transparency and the social stigma adhered to the Covid-19 patients. In addition to positive Covid-19 data, public disclosure is the forcible repatriation of Covid-19 patients by their relatives. This action is imminent, considering the infected patient will potentially become the subject of the new virus cluster in their environment. The existing situation is worsened by the fact that, in some cases, society often takes by force the deceased patients who suffered from Covid-19. This action violates the Protocols for the Prevention and Control of Coronavirus Disease (Covid-19) issued by the Ministry of Health of the Republic of Indonesia (*Protokol Kesehatan*). The Protocol regulates that every deceased patient under the status of Patient under Supervision and Positive for Covid-19 infections must be buried according to the *Protokol Kesehatan* procedure (Arsil and Ayuni, 2020). Regarding this issue, Awi Setiyono, Head of the Public Information Bureau of the Police Public Relations Division, Police Brigadier General, said that the perpetrators could be subject to criminal offenses that violate multiple articles. These series of issues that emerged

²⁶ during the Covid-19 pandemic show the Government's need for socialization and public awareness enhancement (Angelika et al., 2021).

During the pandemic, disclosing medical records for patients with positive COVID-19 status was considered necessary to increase awareness of contacted people. The disclosure of medical records is indeed against medical ethics and patient confidentiality (Kramer, Brown, and Kopar, 2020). However, in a pandemic, a medical worker's ethical obligation can be negated by the compulsion to protect others at risk (*for the common good*). For example, during the HIV/AIDS pandemic, there was a revolution in public perception about the importance of patient confidentiality because the reports bring more benefits to the public. In this case, society can use this information to determine prevention and advanced treatment measures. The patient's confidentiality disclosure in the pandemic era is considered beneficial; therefore, the support for disregarding patient confidentiality is increasing significantly. It is helpful to inform third parties who received exposure to the virus. That said, enforcing patients' confidentiality with Covid-19 becomes an ethical dilemma if it puts others at risk (Kramer, Brown, and Kopar, 2020).

³ Nevertheless, given the high morbidity and mortality rates and the level of transmission of Covid-19, confidentiality must be restrained by public health interests. It is also essential that medical workers and hospital systems report positive cases to public institutions so that data can be accurately tabulated and analyzed to inform treatment decisions. Recently, Indonesia established an integrated application that provides information regarding vaccines, boosters, covid-19 tests, and other related health information. This application is called *Peduli Lindungi*. Citizen must input their Identity Card Number to register for the application and when they need to download vaccine certificates. This application is mandatory for Indonesian citizens. In its early days, people must scan barcodes to enter public places. Currently (October 2022), people still use *Peduli Lindungi* to show their vaccination and covid-19 tests, especially in airports, because that is the only acknowledged proof. Therefore, there is indeed data transparency regarding Covid-19 transmission management. Since it is mandatory and uses an Identity Card Number, data protection should be on alert because *Peduli Lindungi* is vulnerable to data leaks. Based on the dilemmas described in the previous explanation, the authors are interested in observing patient confidentiality provisions during the pandemic through an article entitled "Patient Rights During Covid-19 Pandemic: Dilemma between Data Privacy and Transparency in Indonesia".

¹⁴ 2. RESEARCH METHOD

This research uses a phenomenological-philosophical method. Through this method, certain phenomena are viewed thoroughly, which views the society's implementation that examines practical sociological issues. The research's data are intertwined with Indonesia's legislation, summarized from various secondary data and legal materials. Therefore, samples were obtained from library materials, especially those related to patient data confidentiality and government regulations on patient data protection. Data discussions and conclusions were analyzed through qualitative approaches, including statutory, conceptual, and analytical approaches. Furthermore, this research specifies prescriptive-analytical techniques related to the research's problems.

3. RESULT AND DISCUSSION

Based on the previous matter, this research further discusses the Indonesian regulations protecting patient confidentiality during the pandemic and the legal status of those responsible for taking the pandemic-suspected patient in force.

a. Challenges in Pandemic Era

The COVID-19 pandemic has caused several interest clashes, one of which is a conflict between individual and community interests. One of the most important implications of this concern is the impact of COVID-19 on sociology, particularly interpersonal relationships. This study identifies several problems resulting from the pandemic. Firstly, community stigmatization regarding infectious diseases. Secondly is the dilemma between the rights to privacy of COVID-19 patients' identities. Thirdly, the disclosure of public data on COVID-19 patients involves various risks and concerns that may cause material and immaterial losses (Gafur *et al.*, 2021). One of the social issues worth discussing is the general public's insistence on disclosing the identities of COVID-19 patients for public safety. Socially, it is true that disclosing one's identity will raise public awareness of COVID-19; however, it is not uncommon for this disclosing of one's identity to lead to acts of persecution as a result of public stigmatization of infectious diseases, particularly COVID-19 infections. As a result, it is unavoidable that this policy will harm human privacy rights (Firmansyah and Haryanto, 2021).

In the context of health, social stigma is a negative relationship between a person or group of people with specific characteristics and diseases. People may be labeled, stereotyped, discriminated against, treated separately, and experience a loss of status due to their perceived association with a disease during an outbreak. Such care can harm those suffering from the disease and their caregivers, family, friends, and community (Dai, 2020). People who do not have the condition but share some of the same characteristics as this group may also be stigmatized (Setiawan, 2021). The current COVID-19 outbreak has resulted in social stigma and discrimination against people of certain ethnic backgrounds and anyone suspected of having had to contact with the virus. The stigma attached to COVID-19 stems from the fact that little is known about it. Scientists, researchers, and medical professionals worldwide are still working very quickly to figure out strategies to deal with the novelty of this virus. The fear of the unknown has overwhelmed humankind evolutionarily (Asrin, 2021).

The stigma is oriented not only toward recovered Covid-19 patients but also toward people in contact with the disease. These people are people who receive treatment and perform Covid-19 examinations and even family groups with Covid-19 patients. Frontline workers, medical practitioners, nurses, police officers, soldiers, and others all bear the burden of social stigma. They were evicted from the neighborhood, denied access to their homes, and their families were

threatened (Setiawan and Suwardianto, 2021). The goodwill of the people they represent has been trumped by social stigma. This stigma also directly impacts the numerous cases of COVID-19 patients' public body repartition. This reaction mainly causes community anxiety and fear about the spread of COVID-19. The information obtained also has an impact on stigma. The formation of public opinion and trust is heavily influenced by information. According to a 2020 study of 100 respondents, more than 53% received information about the pandemic from social media and untrustworthy information platforms. The obtained data is erratic and frequently contains fake news (hoaxes) on irresponsible sites or websites. As a result, understanding of Covid-19 decreases, and it is easy to stigmatize Covid-19 patients. The ineffectiveness of the Government also contributes to a lack of information distribution in providing information to the general public. Poor information distribution mechanisms and the borderless nature of technology complicate the spread of false information among the masses (Herawati *et al.*, 2021).

Based on this, the authors identify several major issues that pose challenges to the community's handling of COVID-19, namely:

1. Government inconsistency in setting policies for handling covid 19

The Covid-19 pandemic prompted the Government to respond quickly, creating confusion among the public due to policy inconsistencies. Providing adequate facilities does not accompany some community policies, such as social distancing and the use of masks. In addition, the home quarantine policy is not accompanied by material support and direct attention to the affected community.

2. Information dissemination from the Government is not effective and uniform

The existence of a pandemic that causes many diverse opinions causes the information provided by the Government to change frequently. In addition, the rise of difficulty in controlling false information is also a common challenge during this pandemic.

3. The social stigma that is also imposed on patients with Covid 19

There are many cases of people infected with COVID-19 who are unwilling to open their medical data to the public because they fear the community's stigma. This is caused by poor information distribution by the Government regarding efforts to normalize the stigma that people with COVID-19 are not to be ostracized.

4. The rise of cases of forced repatriation of patient's bodies infected by their families

This is an integral part of the challenge of community stigma during the pandemic. The fear of the families of the bodies indicated by the pandemic virus will lead to public perception, prompting them to take extreme steps to 'cover up the truth. This is a big challenge considering that bodies infected with the pandemic can transmit the virus to their surrounding families.

b. The Protection of Patient's Confidentiality During the Pandemic

³⁰ The 1948 Declaration of Human Rights stipulates that everyone has the right to health for them as an individual and their family. In national law, health rights are protected explicitly under Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia (Siringoringo, Hendrawati, and Suharto, 2017). However, Article 28J paragraph (2) of the 1945 Constitution states that restrictions on individual human rights, including individual health rights, must be co-occurred by morals, religion, and security values and must be aligned with the public interest. The provided stipulation is supported by Article 4 of the International Covenant on Civil and Political Rights (ICCPR), which states that in the matter of an emergency that potentially threatens the life of a nation, a state may take action to the extent that is necessary by the needs of the emergency. At this moment, the President is encouraged to declare a state of emergency to mark the Government's forthcoming measures in wielding the current situation as needed (Nuh, 2011).

Covid-19 is considered a life-threatening condition for public health, and therefore in line with the Government's need to declare a state of emergency (Mekhawat *et al.*, 2020). Regarding this matter, the Government has enacted the Presidential Decree of the Republic of Indonesia Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19). This action taken by the Government is a preventive measure to restrict the further spread of the virus. Besides enacting the emergency law through President's Decree, several other approaches are deemed necessary, such as disclosing patient confidentiality to the public (Putri *et al.*, 2020). The demand to disclose the identity of Patients under the status of positive for Covid-19 is considered inevitable to restrain the virus transmission in the broad society. The following chart 1 can illustrate the need to disclose a patient's record:

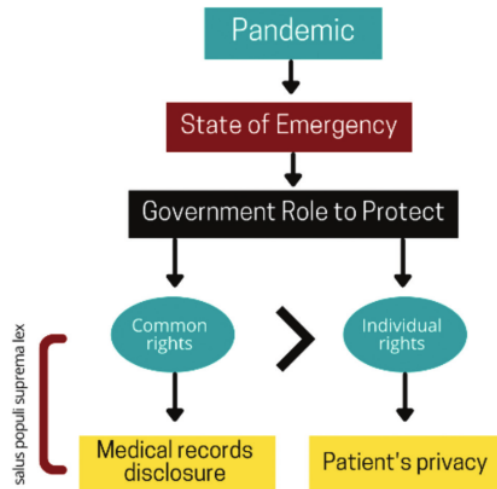


Chart 1.

The existing chart explicitly illustrates that common rights (public interest) will always precede individual rights (patient's interest). Article 28F of the 1945 Constitution of the Republic of Indonesia provides a legal basis supporting the action of disseminating necessary information to the general public (Retnowati, 2012).

However, to ensure the patient's confidentiality disclosure does not violate the patient's rights, the Government must formulate necessary procedures to minimize the possibility of patient personal information leakage. Law Number 14 of 2008 concerning Public Information Disclosure regulates that the Government must enforce effective, efficient, and transparent governance, where these approaches are very much needed in times of pandemic. Transparent and effective governance must be implemented since these measures require public assistance to subdue the pandemic virus spread (Ruslana and Sekarsari, 2020). In ensuring the protection of patient privacy during the pandemic, the Decree of the Medical Ethics Honorary Council Number 015/PB/K.MKEK/03/2020 concerning Medical Ethics Fatwa regulates that in certain circumstances, patient's data can be disclosed but restricted only to initials of the name, gender, brief health status (died/clinically critical/severe/recovered), age, and limited chronology to the transmission. For example, the description of potential transmission location to increase public awareness and epidemiological investigations) (Fakultas Kedokteran UNAD, 2020).

In addition, to ensure these approaches run effectively, both Government and the public must simultaneously work together to handle this emerging issue. The public will actively support these efforts by disclosing their Covid-19 transmission status. At the same time, the Government complies with its obligation to announce all information, including virus type, virus cluster, and the potential area of the newly detected infection. Although it is understood that patient privacy is their right and can only be disclosed with the patient's consent, the realization of this approach depends on the public's sympathy and concern for the infected patient. The public must know that the state can effectively overcome this pandemic with its active role (Kahar *et al.*, 2020).

In addition to the role of the Government and society, medical workers also hold an essential role in combating this pandemic virus. Regarding this matter, it is stipulated that disclosing patient data is a serious ethical violation. However, several law provisions accommodate an element of justification that permits medical workers to disclose patient data, as listed in table 1 below:

Table 1. Medical Records Disclosure Provisions

9 Laws	Article	18 Content
Law Number 29 of 2004 concerning Medical Practice	Article 48, paragraph (2)	Medical confidentiality can be disclosed to benefit the patient's health, complying with law enforcement requests, patient requests, or based on statutory provisions.
5 Law Number 36 of 2009 concerning Health	2 Article 57, paragraph (2)	The provisions regarding the right to the confidentiality of personal health conditions do not apply in the matter of: a) statutory orders; b) court order; c) the permit in question; d) public interest; e) the interests of the patient.
2 Law Number 44 of 2009 concerning Hospitals	18 Article 38, paragraph (2)	Medical confidentiality can be disclosed to benefit the patient's health, complying with law enforcement requests, patient requests, or based on statutory provisions.
Law Number 36 of 2014 concerning Medical Workers	Article 73	Medical secrecy may only be disclosed for the interests of Health Service Recipients, compliance with law enforcement purposes, the requests of Health Service Recipients themselves, or yielding the statutory provisions.
22 Law No. 14 of 2008 concerning Disclosure of Public Information 17	Article 10 paragraph (1)	Public bodies are required to immediately announce any information that may threaten many people's lives and public order.
Circular Letter Number: 02 of 2020 concerning Guidelines for Public Information Services during a Public Health Emergency due to Corona Virus Disease 2019 (Covid-19)	Point 4	Considering that the COVID-19 pandemic condition is a health emergency, and the disclosure of public information systems is one of the efforts to tackle the pandemic virus, the Central Information Commission mandates all parties ⁶ to cooperate in informing the following matters: a. Type of disease, distribution, cluster, and spread prevention b. Strictly and limitedly informing the spread of the virus while protecting the personal data ⁷ of the infected patient. c. Strictly informing the spread of the virus as an early warning for people living in virus-prone areas. d. Informing the public about the availability of health facilities e. Informing the deceased burial procedure for infected patients f. Informing the cost and public health insurance g. Informing the policy plan and its changes

⁶ All parties include the Chair of the Task Force for the Acceleration of Handling Covid-19, the Minister of Health of the Republic of Indonesia, Governors, Regents, and other Agencies related to the handling of health emergencies

⁷ Personal data includes the name, address, phone number, passport number, etc.

The abovementioned provisions are the justification for disclosing patient information to the general public²⁵. (Kumala, 2020) These laws will be mainly related to the legal principle of *Salus Populi suprema lex*, which means that “the safety of the people is the most important law”. Therefore, it is undoubtedly a necessary measure considering that the interests of the society must take precedence (Shodikin and Damayanti, 2017).

c. Socio-Legal Issue: Overcoming Existing Social Stigma Through Strengthening Law Enforcement in Pandemic Era

In addition to the general refusal to disclose the infected patient's medical records, a social stigma is one inevitable issue that occurred during the pandemic times. The World Health Organization (WHO) is aware of this predicament and has distributed guidelines for preventing and dealing with social stigma. WHO defines social stigma as a negative perception of a person or group labeled, discriminated against, or considered different due to their status associated with certain diseases. Social stigma does not only suffer by the patient but also by the patient's family and relatives. One of the substantial impacts of the social stigma is that infected patients attempt to cover up their disease, even dodging hospital treatment out of fear of the perception coming from the surrounding society (Organization, 2020; Ramaci *et al.*, 2020). It is worsened by the recent phenomenon where the social stigma inflicted on the family and relatives to conduct forced repatriation of the patient under surveillance and positive for Covid-19. Deceased Covid-19 patient's forced repatriation by family relatives often happens in Indonesia. Family relatives refuse to bury the deceased based on Covid-19 Health Protocol because they are concerned of the stigma they will receive from the society. (Sugianto, Anna, and Sutanto, 2021). Therefore, social stigma plays a significant role in this pandemic, raising questions about the legal status of the parties who forcibly repatriate infected patients (Waruwu, Ediwarman, and Marlina, 2021).

⁴⁰ One of the Government's efforts to execute social control in Indonesia is by implementing the *Peduli Lindungi* application. This application was established based on the Ministerial Decree No. 171 of 2020 concerning the Enactment of the *Peduli Lindungi* Application's Implementation as an Effort to Prevent Covid-19 Transmission. However, various aspects of people's lives make it simple for the *Peduli Lindungi* application to be optimally implemented, especially at the beginning of its implementation. It is important to note that data in the *Peduli Lindungi* Application related to COVID-19 vaccinations, boosters, and other health information are confidential because it involves patient data privacy. Data confidentiality protection in *Peduli Lindungi* is vital because the application requires Citizen Identity Card Number that could be misused if leaked. *Peduli Lindungi* data's safety guarantee from mistreatment was also a highlighted issue. The concern increased when President Joko Widodo's vaccination card data was publicized. The public was still determining whether other citizens' data's confidentiality was also secured.

Moreover, there was also apprehension that a particular party would hack the *Peduli Lindungi* application. Even though these were mere possibilities, data protection is a significant matter, and an investigation is necessary. From this situation, we can see that Covid-19 caused Indonesia to exclude patient data privacy disclosure considering the virus' transmission requires the mentioned information (Herdiana, 2021).

Controlling the virus transmission means there is a social control progression. The Government must also manage society's activities to prevent the virus from spreading. As a tool of social control, the law can coerce and yield an obligation to each party in its jurisdiction territory. On a practical level, this will also have a substantial impact, especially in responding to the issues of positive law implementation. The question then arises whether the legal framework applies to particular concrete situations, as Gustav Radbruch's theory states in his book "*einführung in die rechtswissenschaften*". He formulated that the law must have 3 (three) fundamental values, namely, Justice (*Gerechtigkeit*), Utility (*Zweckmassigkeit*), and Legal Certainty (*Rechtssicherheit*) (Widowati, 2013). The role of law as a tool of social control can be illustrated through the following chart 2:

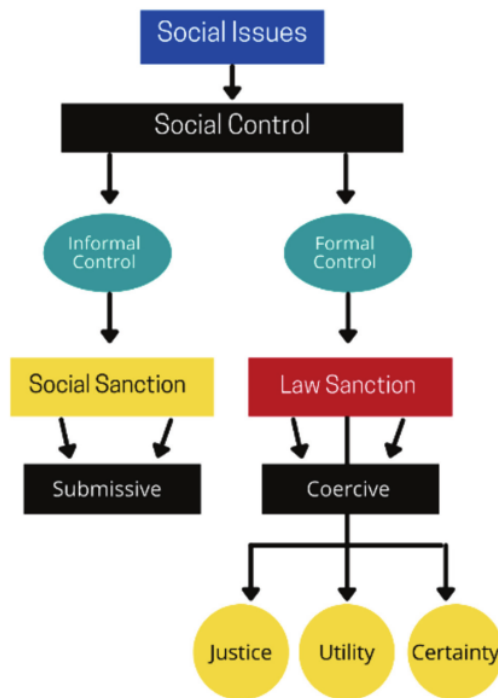


Chart 2. Law as a Tool of Social Control

The chart above implicitly explains that both formal and informal approaches must be taken to overcome social issues. If a social sanction is inadequate to overcome these existing problems, legal sanctions stand to present its coercive nature. This coercive nature encourages social control resulting from the "threat" presented by the law to society. Therefore, in the case of the forced repatriation and retrieval of patients (both alive and deceased) under the suspicion of being exposed to COVID-19, the law must be present to grant certainty to provide utility and justice to society (Julyano and Sulistyawan, 2019). Regarding this matter, the Indonesian National Police stated that efforts to retrieve the deceased bodies of Covid-19 patients in force violated ³⁴ *Protokol Kesehatan* procedures and may be subject to criminal acts. The statement is in line with the purpose of criminal law: to alter ³⁵ the perpetrators and provide a deterrent effect for criminal actors (Widowati, 2013).

Information on the ³⁶ criminal peril of these irresponsible parties has been disseminated through a Telegram Letter issued by the Head of the State Police of Indonesia. In his letter, he stated, "if there are still parties who retrieve the deceased patients of Covid-19 without regard to applicable regulations or by force, then ³⁷ the parties can be subject to criminal sanctions". The legal basis of the letter is Article 5 of Law Number 4 of 1984 concerning ³⁸ *Outbreaks of Infectious Diseases*, which imperils the perpetrators with a criminal sentence of one year in prison or a fine of up to Rp. 10³⁹00,000 (One Hundred Million Rupiah). Another related legal basis is the provision in Law Number 6 of 2018 concerning Health Quarantine, which requires each person to comply with ⁴⁰ implementation of health quarantine to prevent the ingress and egress of diseases that can cause public health emergencies (Article 9).

⁴¹ Moreover, Article 93 of the Health Quarantine ⁴² law threatens anyone who does not comply with the implementation of this effort with a maximum imprisonment of 1 year and a maximum fine of Rp. 100,000,000 (one hundred million rupiahs). In addition, the Criminal Code, as the primary source for criminal sentences in Indonesia, regulates this emerging issue under Article 214 of the Criminal Code *jo.* Article 335 of the Criminal Code *jo.* Article 336 of the Criminal Code imperils imprisonment of up to 7 (seven) years (Wiryani *et al.*, 2021). The police have implemented this plethora of provisions on several occurrences related to the forced repatriation of infected and deceased patients during the Covid-19 Pandemic. One case was taken from South Sulawesi, where the police have determined ⁴³ 12 parties involved in 4 cases of forced repatriation of suspected COVID-19 patients. The Head of the Public Information Bureau of the Public Relations Division of the National Police, Police Brigadier General Awi Setiyono, stated that ⁴⁴ the suspects were charged under various layers of Articles. These Articles are Article 214 of the Criminal Code *jo.* Article 335 of the Criminal Code *jo.* Article 336 of the Criminal Code *jo.* and Article 93 of the Criminal Code Law Number 6/2018 (Yazid, 2020).

Although the telegram dissemination from the National Police Chief has solid legal ground, the author argues that this effort is still deemed insufficient, considering this emerging issue still occurs. Moreover ⁴⁵ the National Police Chief's Telegram is excluded from the regulations hierarchy under Law Number 12 of 2011 concerning the Legislation

Enactment. Thus, the binding legal force of Telegram is considered inadequate to regulate society, and its effectiveness is still being determined.

The emerging issue relating to the repatriation of infected patients shall encourage the Government to effectively seek solutions to the current socio-juridical problems (Nasir, 2017). The lack of public awareness and the absence of effort to control social stigma by the Government are the main factors causing this issue. Pandemic management requires consideration of every aspect, including the social aspect. Policy strengthening by the Government itself is only deemed sufficient to deal with problems like a global pandemic with the presence of social support (Aji, Wilonotomo, and Nugroho, 2021). Unfortunately, the Government still needs to accommodate this legal need thus far. The legal status for irresponsible parties is still criminalized under the old legal grounds, which may have loopholes and is less relevant to the current situation. The *Peduli Lindungi* application, for example, was supposed to be a comprehensive report on Covid-19 transmission control in Indonesia. However, the application is very prone to data leakage, which shows a weak protection system. Therefore, the authors believe it is essential to establish a legal framework to fill the legal vacuum and simultaneously achieve synergy between social development and law.

A pandemic is a situation that requires coordination from various dimensions, either Government, private, or society. The Government may incite conducting efforts through the enactment of guidelines and a series of socialization. The guidelines are related to the Covid-19 virus, social stigma, patient rights, and advanced prevention procedures as preventive measures, as well as establishing the legal grounds for criminal sanction applied for those who are non-compliant with the implementation of Covid-19 as a coercive measure. (Yusuf and Sirait, 2022) Concerning data privacy, partial information during the pandemic must be disclosed as it concerns the public's interests. However, data transparency is not freely exposed; it should be integrated into a comprehensively protected system. The dilemma between patient privacy and data transparency should be interlinked by a policy that could ensure patient privacy while still providing the necessary data for transmission control purposes, which Indonesia is yet to fulfill. Indonesia is trying to make ends meet in the information aspect (*Peduli Lindungi*). However, since it is not based on qualified protection, there is still a high risk of data leakage. (Correia, Rego and Nunes, 2021)

4. CONCLUSION

In an emergency, the law is encouraged to accommodate legal needs simultaneously, even though it may have to conflict with the provisions that apply in ordinary times (non-pandemic era). The public interest will override individual interests, including fundamental rights. Usually, the disclosure of information related to patient data is a severe violation of the code of ethics. However, disclosure of patient data is allowed if it is done for reasons of public interest. This permit is granted under Article 48 of Law 29/2014 on health, Article 57 of Law no. 29/2004 on Hospitals, and Article 73 of Law no. 36/2014 on Medical Personnel. In addition to limiting the rights of individual patients, the Government must also consider all aspects, including the social point of view. It is not uncommon to find

cases of forced repatriation of patients infected with Covid-19 and the death of family members due to the existing social stigma. Thus, it can be understood that social stigma is one of the problems that cannot be avoided during a pandemic; where if this aspect is not considered, it will cause further difficulties.

National law has enacted many laws in punishing irresponsible parties based on Article 5 of Law Number 4 of 1984 concerning Outbreaks of Infectious Diseases and Article 214 of the Criminal Code jo. Article 335 of the Criminal Code jo. Article 336 of the Criminal Code jo. Article 93 of Law Number 6 of 2018. One of the Government's efforts to overcome this is the need for the PeduliLindung application based on the Decree of the Minister of Communication and Information Number 171 of 2020 concerning the Determination of Care to Protect Applications. The application is implemented in the public favor to ensure that individuals who have met the minimum requirements can access public services, for example, in the field of transportation and how to check patient privacy data. This shows that the Pandemic event established a policy that could allow access to individual privacy data for reasons of public interest (Covid-19). However, this study shows that many of these laws could be more effective in dealing with this emerging problem. Therefore, the Government as a state administrator must accommodate these preventive and coercive legal needs.

REFERENCES

- AJI, K.P., WILONOTOMO AND NUGROHO, T.W.A. (2021) 'Collaborative Efforts in Handling Foreigners Stranded in Indonesia During the Covid-19 Pandemic', *Proceedings of the 1st International Conference on Law and Human Rights 2020 (ICLHR 2020)*, 549(Iclhr 2020), pp. 40–49. doi:10.2991/assehr.k.210506.007.
- ANGELIKA, M. ET AL. (2021) 'Hukuman Pidana Pengambilan Paksa Jenazah Covid19 di Indonesia', *Journal Muara Ilmu Sosial, Humaniora, dan Seni*, 5(1), pp. 199–204.
- ARSIL, F. AND AYUNI, Q. (2020) 'MODEL PENGATURAN KEDARURATAN DAN PILIHAN KEDARURATAN INDONESIA DALAM MENGHADAPI PANDEMI COVID-19', *Jurnal Hukum & Pembangunan*, 50(2), p. 423. doi:10.21143/jhp.vol50.no2.2585.
- ASRIN, A. (2021) 'Social Distrust , Faktor Penghambat Penanganan Covid', *Jurnal Maqasiduna*, 1(1).
- CORREIA, M., REGO, G. AND NUNES, R. (2021) 'The Right to Be Forgotten and COVID-19: Privacy versus Public Interest', *Acta Bioethica*, 27(1), pp. 59–67. doi:10.4067/S1726-569X2021000100059.
- DAI, N.F. (2020) 'Stigma Masyarakat Terhadap Pandemi Covid-19', *Prosiding Nasional Covid-19*, pp. 66–73.
- ENDRI KURNIAWATI (2020) *Hasil Tes Swab Rizieq Shihab Diminta Dibuka untuk Publik, FPI: Jokowi Tidak - Metro Tempo.co*.

- FAKULTAS KEDOKTERAN UNAD (2020) *Rahasia Medis di Era Disruption*.
- FIRMANSYAH, Y. AND HARYANTO, I. (2021) 'Dua Sisi Gelap Covid-19 : Dilematis Antara Keterbukaan Data Identitas Penderita Covid-19 Dan Transparansi Data Publik Dalam Rangka Menekan Stigmatisasi', *Metta : Jurnal Ilmu Multidisiplin*, 1(2), pp. 73–85. doi:10.37329/METTA.V1I2.1349.
- GAFUR, A. ET AL. (2021) 'Covid-19 & Stigma of Patient Families and Health Workers in Makassar City, Indonesia', *Al-Sihah: The Public Health Science Journal*, 13(1), p. 88. doi:10.24252/al-sihah.v13i1.21463.
- HERAWATI, C. ET AL. (2021) 'Stigma, Anxiety, Religiosity, and Economic on Covid-19 Preventive Efforts', *Malaysian Journal of Public Health Medicine*, 21(1), pp. 367–373. doi:10.37268/mjphm/vol.21/no.1/art.846.
- HERDIANA. (2021). 'Aplikasi Peduli Lindungi: Perlindungan Masyarakat Dalam Mengakses Fasilitas Publik Di Masa Pemberlakuan Kebijakan Ppkm', *Jurnal Inovasi Penelitian*, 2(6), pp. 1685–1694. Available at: <https://stp-mataram-e-journal.id/JIP/article/view/959>.
- JULYANO, M. AND SULISTYAWAN, A. (2019) 'Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum', *Jurnal Crepido*, 1(1), pp. 13–22.
- KAHAR, F. ET AL. (2020) *The Epidemiology of COVID-19, Attitudes, and Behaviors of the Community During the Covid Pandemic in Indonesia*, *International Journal of Innovative Science and Research Technology*.
- KRAMER, J.B., BROWN, D.E. AND KOPAR, P.K. (2020) 'Ethics in the Time of Coronavirus: Recommendations in the COVID-19 Pandemic', *Journal of the American College of Surgeons*, 230, pp. 1114–1118. doi:10.1016/j.jamcollsurg.2020.04.004.
- KUMALA, R. (2020) 'Legal Analysis of Government Policy on Large Scale Social Restrictions in Handling Covid-19', *The Indonesian Journal of International Clinical Legal Education*, 2(2), pp. 147–166.
- MARK ROTHSTEIN (2020) 'Public Health and Privacy in the Pandemic', *AJPH*, 110(9), PP. 1374–1375. doi:10.2105/AJPH.2020.305849.
- NASIR, G.A. (2017) 'KEKOSONGAN HUKUM & PERCEPATAN PERKEMBANGAN MASYARAKAT', *Jurnal Hukum Replik*, 5(2), p. 172. doi:10.31000/jhr.v5i2.925.
- NUH, M.S. (2011) 'Hakekat Keadaan Darurat Negara (State Of Emergency) sebagai Dasar Pembentukan Peraturan Pemerintah Pengganti Undang-Undang', *Jurnal Hukum*, 18(2), pp. 229–246.
- OLIVIA, S., GIBSON, J. AND NASRUDIN, R. (2020) 'Indonesia in the Time of Covid-19', *Bulletin of Indonesian Economic Studies*, 56(2), pp. 143–174. doi:10.1080/00074918.2020.1798581.
- ORGANIZATION. (2020). *A guide to preventing and addressing social stigma associated with COVID-19*.

- PUTRI, K. *ET AL.* (2020) 'Legal Consequences of Presidential Decree Number 12 of 2020 on the Implementation of Private Contracts', *Lex Scientia Law Review*, 4(2), pp. 55–76. doi:10.15294/LESREV.V4I2.41371.
- RAMACI, T. *ET AL.* (2020) 'Social Stigma during COVID-19 and its Impact on HCWs Outcomes', *Sustainability 2020*, Vol. 12, Page 3834, 12(9), p. 3834. doi:10.3390/SU12093834.
- RETNOWATI, E. (2012) 'KETERBUKAAN INFORMASI PUBLIK DAN GOOD GOVERNANCE (ANTARADAS SEIN DAN DAS SOLLEN)', *Perspektif*, 17(1), p. 54. doi:10.30742/perspektif.v17i1.94.
- RUSLINA, E. AND SEKARSARI, R. (2020) 'Legal Protection of Medical Staff in Hospitals during The Covid-19 Pandemic Era', ... *Journal of Latin ...*, 1(1), pp. 29–35.
- SARI, D.K. *ET AL.* (2021) 'Positive Correlation Between General Public Knowledge and Attitudes Regarding COVID-19 Outbreak 1 Month After First Cases Reported in Indonesia', *Journal of Community Health*, 46(1), pp. 182–189. doi:10.1007/s10900-020-00866-0.
- SETIAWAN, C.V. (2021) 'KETERASINGAN DALAM PENGALAMAN PASIEN COVID-19', *Pastoralia*, 2(2), pp. 33–48.
- SETIAWAN, L. AND SUWARDIANTO, H. (2021) 'Community Stigma Against COVID-19 Patients', *Journal of Applied Nursing and Health*, 3(2), pp. 64–70. doi:10.55018/janh.v3i2.7.
- SHEKHAWAT, R.S. *ET AL.* (2020) 'Privacy and patient confidentiality in times of Covid-19', *The Medico-legal journal*, 88(4), pp. 229–230. doi:10.1177/0025817220935908.
- SHODIKIN, D.F. AND DAMAYANTI, F.P. (2017) 'PENERAPAN ASAS SALUS POPULI SUPREMA LEX UNTUK MENGURANGI PENGADUAN PELANGGARAN HAK ATAS KASUS PEMBANGUNAN INFRASTRUKTUR', in *Prosiding Simposium II – UNIID*. Semantics Scholars Corpus ID: 197831287, p. 193.
- SIRINGORINGO, V.M.P., HENDRAWATI, D. AND SUHARTO, R. (2017) *PENGATURAN PERLINDUNGAN HUKUM HAK-HAK PASIEN DALAM PERATURAN PERUNDANG-UNDANGAN TENTANG KESEHATAN DI INDONESIA, DIPONEGORO LAW JOURNAL*.
- SUGIANTO, D., ANNA, J.A. AND SUTANTO, S.H. (2021) 'Health self-regulation and self-compassion as predictors of COVID-19 preventive behavior among Indonesian sample', *Jurnal Psikologi Ulayat*, pp. 2580–1228. doi:10.24854/JPU409.
- WARUWU, D.S., EDIWARMAN, E. AND MARLINA, M. (2021) 'Kajian Hukum Mengenai Tindakan Korps Brigade Mobil Polri Terhadap Pelaku Pelanggaran Protokol Kesehatan Covid-19', *Journal of Education, Humaniora and Social Sciences (JEHSS)*, 4(2), pp. 1090–1095. doi:10.34007/JEHSS.V4I2.805.
- WIDOWATI, C. (2013) 'HUKUM SEBAGAI NORMA SOSIAL MEMILIKI SIFAT MEWAJIBKAN', *ADIL: Jurnal Hukum*, 4(1), pp. 150–167.

- WIRYANI *ET AL.* (2021) 'Rejection of Funeral for Covid-19 Patients: Indonesian Legal Perspective - UMM Institutional Repository', *Jurisprudence*, 10(2).
- WORLD METTER (2021) *INDONESIA COVID: 1,843,612 Cases and 51,296 Deaths - Worldometer*.
- YAZID, F. (2020) 'Penerapan Sanksi Pidana Terhadap Pengambilan Paksa Jenasah Pasien Covid-19 Di Indonesia', *Jurnal Belo*, 6(1), pp. 62–72.
- YUSUF, D. AND SIRAIT, N.N. (2022) 'Challenges of Implementing Foreign Manpower Policy During the Covid-19 Pandemic in Indonesia', in *Advances in Social Science, Education and Humanities Research Atlantis Press*, pp. 406–411.

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