

## DILEMMA BETWEEN THE DISCLOSURE OF COVID-19 PATIENTS' MEDICAL RECORDS AND TRANSPARENCY OF PUBLIC INFORMATION ACCORDING TO LAW IN INDONESIA

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### ABSTRACT

*Covid-19 pandemic is a major problem throughout the world, including in Indonesia, due to its very easy and fast spread from person to person. This medical problem directly affects social life, especially legal issues that cause conflicts between the confidentiality of Covid-19 patient data as a form of private law and the openness of public information as a form of modern society's demands for open and transparent information in the framework of protecting other communities. The status of medical records is also a part of private legal aspects that are confidential and may not be disseminated to the general public without the permission of the owner or the law. But, in the era of the Covid-19 pandemic, accompanied by the public's encouragement of public information disclosure, the principle of public interest must be guaranteed by the rule of law. This research used empirical normative methods. In normative research, the type of data used was secondary data, which consisted of primary, secondary and tertiary legal materials. While empirical research, using primary data in the form of answers that could be obtained in the field. The specific objective of this research was how the Government as the regulator becomes important in facilitating the public interest by not injuring the individual rights of Covid-19 patients.*

Keywords: medical records, medical secrets, public information disclosure

### A. INTRODUCTION

Since December 2019, there have been a series of unexplained pneumonia cases in Wuhan City, China. The Chinese government and researchers have taken swift steps to bring the epidemic under control and seek the etiology of the mysterious pneumonia. On January 12, 2020, the World Health Organization (WHO) gave the terminology for the new virus as Novel Coronavirus 2019 (2019-nCoV). On January 30, 2020, WHO announced the status of the 2019-nCoV epidemic and gave a warning that a public health emergency had occurred and had become a serious problem at the international level. On February 11, 2020, WHO officially gave the terminology of abnormalities due to 2019-nCoV as Coronavirus Disease 2019 (COVID-19). At the same time, the Coronavirus Study Group (CSG) which is part of the International Committee on Virus Taxonomy called 2019-nCoV a Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2).<sup>1</sup> (AHC Media 2020) Until August 16, 2020 SARS-COV-2 infection cases have infected 21,026,758 cases worldwide with a total death of 755,786 people. The countries with the highest SARS-CoV infection are the United States with 11,271,215 cases, Europe 3,733,965 cases, Southeast Asia 2,971,104 cases, Eastern Mediterranean with 1,710,272 cases, and Africa with 936,062 cases.<sup>2</sup> (World Health Organization 2020) Indonesia as part of Southeast Asian countries reported 139,549 confirmed cases, 40,296 in treatment, 93,103 recovered and 6,150 deaths (CFR: 4.4%) on 16 August 2020.<sup>3</sup> (Ministry of Health of the Republic of Indonesia 2020) .

In middle of March, the Indonesian government announced that the spread of Covid 19 was a national disaster, including the Malaysian Prime Minister announcing the spread of Covid 19 in Malaysia which took a policy to lock down in his country from 18 March 2020 for fourteen days, up to 31 March 2020. Meanwhile, Prime Minister of Singapore Lee Hsien Loong stated that Singaporeans should not panic in facing the Covid 19 epidemic which began to plague Singapore since the end of January 2020. One of the best strategies from Singapore to fight the corona virus is clear communication and information by the Singapore Government to its citizens. The policy in Singapore is almost the same as the policy in Indonesia by implementing the Large-Scale Social Restriction (PSBB) policy in several regions in Indonesia, especially in big cities such as Jakarta, Bandung, Surabaya and the supporting areas of the capital city, Jakarta, such as Bekasi, Depok, Bogor, and Tangerang. The implementation of PSBB in Jakarta is based on the Minister of Health Regulation (Permenkes) No. 9 of 2020, there are several important points regulated in the PSBB regulations, including public transportation, private vehicles, socio-cultural activities and the business sector that are still running.

The President of the Republic of Indonesia on April 13, 2020 has signed Presidential Decree No. 12 of 2020 concerning the Determination of the Corona Virus (Covid 19) as a National Disaster. Joko Widodo is also committed to tackling the problem of the COVID-19 pandemic as soon as possible with various strategic steps which in handling form a Covid-19 Management Unit under the control of the National Disaster Management Agency (BNPB) which is then changed to a COVID-19 Handling Task Force which works under the supervision of the Committee for Handling COVID-19 and National Economic Recovery. The strategic steps that have been established from the beginning to the present are in the form of handling COVID-19 confirmed patients, the imposition of large-scale social restrictions (PSBB), especially in areas with high incidence rates, routine hand washing and hygiene, closing access to foreign countries. All of these regulations are contained in Presidential Decree Number 11 of 2020

<sup>1</sup> HC Media. 2020. "Beating the Pandemic: What Emergency Providers Should Know About COVID-19." Pediatric Emergency Medicine Reports.

<sup>2</sup> World Health Organization. 2020. "WHO Coronavirus Disease (COVID-19) Dashboard." World Health Organization. 2020.

<sup>3</sup> Kemenkes RI. 2020. "Situasi COVID-19." Kementrian Kesehatan RI. 2020.

concerning the Determination of Public Health Emergencies related to Covid-19<sup>4</sup>(President of the Republic of Indonesia 2020a) which in its implementation is outlined in Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Framework of Accelerating Handling of COVID-19. Over time, all these regulations have changed from the PSBB terminology to New Normal and the last one is New Habit Adaptation.<sup>5</sup> (President of the Republic of Indonesia 2020b).

Tensions related to the problem of public information disclosure towards Covid-19 affected patients, where disclosure of information in the context of handling the Coronavirus Disease-19 (Covid-19) pandemic is still one of the things that attracts the attention of some people in Indonesia. This tension has found its peak momentum when a citizen filed a judicial review to the Constitutional Court (MK) to test norms in a number of provisions regulating information on public disclosure for data on patients affected by Covid-19. The Petitioner conducted a judicial review of Article 48 paragraph 2 of the Law Number 29 of 2004 concerning Medical Practice, Article 38 paragraph (2) of Law Number 44 of 2009 concerning Hospitals, and Article 73 paragraph (2) of Law Number 36 of 2014 concerning Health Workers. These three articles are considered to be contradicting Article 28 F and Article 28 H paragraph (1) of 1945 Constitution. The purpose of this judicial review submission was to reduce the potential for the spread of Covid-19 if the public knows from the start about patient information or suspects Covid-19

However, at the same time the disclosure of patient information is seen by some as the cause of discrimination toward patients. It is actually able to be seen from the example of cases of Covid-19 patients 01 and 02, who tested positive for Covid-19. Their information is disclosed openly so that to a certain point, they become victims of social discrimination because of excessive public stigma against victims. Not only these two patients, it was recently discovered that a number of medical personnel began to experience social rejection after it was discovered that they were the parties handling a number of Covid-19 cases at the hospital where they worked.

In the midst of the implementation of the countermeasures triggered various forms of reaction in the community which are generally perceived as an excessive level of fear and triggered persecution towards certain groups with the risk of contracting COVID-19, one of which is health workers (doctors, nurses, and other related professions). One concrete form of eviction and persecution is such as the case of health workers who work at the Regional Public Hospital who live in the boarding house who experience evictions by boarding owners and local residents because of their concerns about this high-risk population group (key population).<sup>6</sup> (Ravianto 2020)

In the midst of the upheavals that occur in society, there are various problems that have begun to arise, it is about whether it is ethical and legally permissible in the midst of this global pandemic to disclose personal data or patient identities, especially groups of health workers who have confirmed with COVID-19 to the wider community with various possibilities, it is triggering an increase incidents of persecution that do not only occur to medical personnel but can extend to acts of persecution of the medical personnel's family by the community. The dilemma began to occur because actually medical record data in the form of self-identity and patient diagnoses were confidential and could not be disclosed to the public except by court order. The legal offense is regulated by Regulation of Minister of Health No. 269/Menkes/Per/III/2008 regarding medical records.

On the other hand, the public's insistence on data transparency regarding an event is a must and is considered a public right to obtain the widest possible information due to the current era of globalization. This public demand will cause problems and conflicts from two main aspects, it is in the form of personal privacy aspects and interest or information disclosure aspects to the public. In the era of the COVID-19 Pandemic, this has become a dilemma and a very big problem because in fact Article 57 paragraph 2 of Law Number 36 of 2009 concerning the National Health Law states that personal or private rights become invalid, when the order is mandated by law and in the interests of the community.

Based on the above information, the problem in this research was about which is the more important and should be prioritized in this Covid-19 Pandemic era. Private rights and information protection itself become a form of human rights which ideally must be upheld, such as in the form of confidentiality of medical records or data disclosure to the public as a form of data transparency and acceleration of the response to the Covid-19 pandemic which in turn can trigger various strategic social problems in society.

Previously, a research has conducted on problems relating to the disclosure of medical data for Covid-19 patients with transparency of public information, it was Rahmady Rizki Prananda (2020), Journal of Law, Development & Justice Review vol 1 No. June 1, 2020, with the title Legal limitations on the disclosure of medical data for COVID-19 patients: privacy protection Vs transparency of public information. Broadly speaking, this journal discussed that patient medical record data was categorized by a number of laws and regulations as private and confidential individual rights. So that it cannot be published to the public without the consent of the parties concerned. A number of laws and regulations in Indonesia related to the protection of medical record disclosure on Covid-19 patient were still not optimal. Data tracing practices can be carried out in Indonesia by paying attention to proportionality. So that the Law on the protection of medical records should be passed quickly by the Government of Indonesia. Meanwhile, this research discussed about which was more important and should be prioritized in this Covid-19 Pandemic era. Private rights and information protection itself become a form of human rights which ideally should be upheld, such as in the form of confidentiality

<sup>4</sup> Keputusan Presiden RI Nomor 11 Tahun 2020. Penetapan Kedaruratan Kesehatan Masyarakat, no. 031003.

<sup>5</sup> Peraturan Pemerintah Nomor 21 Tahun 2020 Tentang Pembatasan Sosial Berskala Besar Dalam Rangka Percepatan Penanganan Coronavirus Disease 2019/COVID-19" 2019 (022868): 8.

<sup>6</sup> Ravianto. 2020. "Kasus Pengusiran 3 Tenaga Medis Dari Tempat Kos, RSUD Langsung Laporkan Polisi, Ini Pembelaan Ibu Kost." Jabar Tribun News, April 29, 2020. <https://jabar.tribunnews.com/2020/04/29/kasus-pengusiran-3-tenaga-medis-dari-tempat-kos-rsud-langsung-lapor-polisi-ini-pembelaan-ibu-kost>.

of medical records, as well as the data disclosure to the public as a form of data transparency and acceleration of the Covid-19 pandemic.

## B. METHODOLOGY

This research used empirical normative methodology. Normative legal research was in the form of research carried out by means of analysis and synthesis of deductive conclusions from various statements in various secondary data sources consisting of primary legal materials (legislation, legal theories, previous court decisions, doctrines, opinions of the experts) which are all relevant and related to the main issues discussed in this journal. The approach used in this research was an approach that begins with a statutory approach, a conceptual approach, and an analytical approach. The specifications of this research were prescriptive-analytical in which all data synthesis, discussion, and data conclusions were analyzed using a large approach in the form of qualitative research<sup>7</sup> (Ibrahim 2006). Empirical research is also needed, including field research was also needed to find out how the Government as the regulator becomes important in facilitating the public interest by not injuring the individual rights of Covid-19 patients.

## C. RESULTS AND DISCUSSION

Before discussing further about the position of medical records and regarding the disclosure of medical record information to the public in the view of individual and collective rights and obligations, it is better to describe the definition of rights and interests. Sudikno Mertokusumo described Rights as an interest that must be protected with the definition of interest in the form of something that for individuals and society is expected to be protected and it has a meaning of power which should be guaranteed and protected by rules or laws in terms of its implementation.<sup>8</sup>(Mertokusumo 2005) Meanwhile, the meaning of the word information itself comes from "*informare*" which in English means "inform" which makes information a tool or medium of notification of something either based on personal views or academic opinions (based on knowledge). Law of the Republic of Indonesia Number 14 of 2008 concerning Public Information (Rev. Public Information Disclosure) which considers several things in the form of information is part of the essential needs of every human being for personal development and the surrounding environment, especially social and plays an important role for national resilience and the right to obtaining information is part of human rights and openness of information to the public is a form of democracy with high regard for the people's sovereignty; On the other hand, public disclosure can also be used as a means of optimizing the public oversight function of the administration of Public and State Institutions and has an impact on the public interest. Furthermore, defining an information as part of clauses, ideas, signs, and statements which contain messages, meanings and values, either in the form of facts, data, or related explanations and in their delivery the information can be read, heard, or seen in various forms of presentation or packaging (format) relevant to developments in technology, science and communication, both print and electronic media. Law Number 14 of 2008 also describes the view that Public Information is information that is produced, stored, managed, sent, and/or received by a public body that is related to state administrators and/or administrators and other appropriate public agencies with this Law and other information relating to the public interest.<sup>9</sup>(Republik Indonesia 2008).

According to the National Law Theory (an introduction to law) it is known that regulations classify Information on Health into two domains, they are public and private law aspects. A deeper exploration divides aspect of public law into general and specific public law aspects. Public legal aspects that are general in health information include all forms of hospital services or health facilities, both primary, secondary and tertiary as well as in these health facility services such as fees, service mechanisms, standard operating procedures (SOP), health facilities, and financing systems. (BPJS and other insurance). Other things that include special aspects of public law are the report or chronology of the course of a disease, prevention and control of disease, health promotion, early detection of disease, history of disease progression and course, epidemiological studies and patterns of spread and transmission of disease, red zones or the epicenter of the disease, and all other special information that must be disclosed to the public as public information because it has been regulated and mandated by legislation. Health information that is included in the private legal aspect includes everything related to the data contained in the medical record which includes complete patient personal data, history (history of disease history, previous medical history, family history of illness, social history, medical history, and others), relevant and objective examination results both physical and supporting (laboratory, physio-medic, radiological imaging, etc.), diagnosis, treatment, action procedures, and prognosis.

Medical records are very important and crucial in the implementation and administration of health in Indonesia. The definition of medical records according to the Regulation of the Minister of Health No. 269/MENKES/PER/III/2008 is a document in which the document contains data in the form of notes such as patient identity, results of physical and supporting examinations, medical history and treatment, and medical actions that have been given to these patients.<sup>10</sup> (Ministry of Health of the Republic of Indonesia 2008) This medical record is regulated in Article 29 Paragraph (1) of the "h" Law of the Republic of Indonesia No. 44 of 2009 concerning Hospitals, which regulates "Every Hospital has the obligation to organize Medical Records"<sup>11</sup> (Republic of Indonesia 2009a) with confirmation in the follow-up Law, it is Article 70 and Article 71, Law no. 36/2014 concerning Health Workers which explains that every health worker who provides health services to individuals is required to make medical records (Article 70 item 1); The medical record must be completed immediately after the health service is completed (Article 70 point 2), and the medical record must contain data on the name, time, initials or marks of the health worker providing the medical service (Article 70 point 3), and be kept and kept confidential by health facilities (Article 70 point 4). Ownership of medical records belongs to Health

<sup>7</sup> Ibrahim, Johnny. 2006. Teori & Metodologi Penelitian Hukum Normatif. Teori Metodologi Penelitian

<sup>8</sup> Mertokusumo, Sudikno. 2005. Mengenal Hukum Suatu Pengantar. 1st ed. Yogyakarta: Liberty.

<sup>9</sup> Undang-Undang Republik Indonesia Nomor 14 Tahun 2008 Tentang Keterbukaan Informasi Publik.

<sup>10</sup> PERMENKES RI No 269/MENKES/PER/III/2008

<sup>11</sup> Undang Undang No. 44 Tahun 2009 Tentang Rumah Sakit

Facilities and those that can be taken out of health facilities (transfer) are only in the form of a medical resume (Article 71 points 1-2)<sup>12</sup> (Republic of Indonesia 2014)

All of these provisions are strengthened and sharpened by the existence of protection for patients by regulating the guarantee of the security of medical record data as mentioned in Article 79 of the Medical Practice Law which states that there is a criminal sanction in the form of imprisonment for a maximum of one year and fines in material form at the most IDR 50,000,000.00 (fifty million rupiah) for doctors and dentists who do not make medical records according to the applicable regulations<sup>13</sup> (Department of Health of the Republic of Indonesia 2004)

Actually, in Indonesian Medical Practice, medical records are divided into two, they are the original medical records held by the hospital which can only be opened by trial orders (in this case judges) or statutory orders and the medical resume section which contains summary data of the patient's medical records can be taken by the patient wherever he goes as a means of conveying information on the patient's health condition between institutions which is legally less binding and can be disclosed as long as with the patient's permission. According to the Regulation of the Minister of Health No. 269/MENKES/PER/III/2008 Chapter II article 4 states that: a summary of the return or medical resume is made by a doctor or dentist (Article 3 point 2) and contains data in the form of patient identity, admission diagnosis and indication of the patient being treated, summary of the results of the objective examination (physical and supporting), exit/final diagnosis, treatment and medical actions that have been taken, as well as a marker from the doctor or dentist who made the medical resume (name, initials, and signature) (Article 3 point 1)<sup>14</sup> (Ministry of Health of the Republic of Indonesia 2008)

In essence, patients have the right to keep confidential and have certainty to keep their illness and medical conditions confidential as part of the private legal aspect and this is regulated in Article 32 letter "I" of Law no. 44 of 2009 concerning Health, which explains that patients have the right to confidentiality or privacy regarding their illness or medical condition.<sup>15</sup> (Republic of Indonesia 2009a)

Turning to the Covid-19 Pandemic, which invited unrest in the wider community, which prompted the demand for rapid and accurate disclosure of information to be something that must get the government's attention for several reasons, including (1) the era of globalization requires the government to open itself to information disclosure, (2) Implications of Human Rights Enforcement which require information. (3) Advances in technology and easy access to information on information disclosure; (4) There is a demand to create "good governance" with the main requirement in the form of information disclosure to the public. Public law itself actually regulates public openness and this is stated in Law No. 14 of 2008 concerning Information Disclosure, which in its implication must be in line with Law No. 36 of 2009 concerning Health, especially stated in article 169 of the Health Law which regulates that the government will make it easy to obtain access to information, especially health information, to the public in order to increase the degree and knowledge of the community.<sup>16</sup> (Republic of Indonesia 2009b).

Problems began to arise when there was a massive disease transmission situation and the government was still encouraged to create good governance while maintaining information disclosure to the public without neglecting private rights which are confidential in this case is medical records. During the Covid-19 pandemic, there is no certainty when and where this pandemic will end without a vaccine as a "savior" in overcoming this pandemic, the government as the regulator is required to carry out social vaccines which are non-medical which include informative communication steps. regarding any treatment that has been tested, the number of positive cases of Covid-19, the death rate for Covid-19, the cure rate for Covid-19, health promotion, preventive measures, protocols for handling bodies, regulation of the health system, period or time of quarantine and all related information must be opened to the public in an accurate, open and accountable manner in order to reduce the increase in Covid-19 cases, one of which is the opening of medical record data.

Another perspective in consumer protection law and society is the consumer group of health services. This consumer view in the National Health Insurance system is not limited to sick community groups, but healthy community groups are members of the consumer group of health services, in this case included in the public health promotion group. According to Article 4 Paragraph (3) of Law Number 8 of 1999 concerning Consumer Protection by still paying attention to Law Number 44 of 2009 concerning Hospitals which regulates that the rights of consumers (society and patients) are to obtain honest, clear and correct information. regarding the condition of the services and or goods; as well as its relation to health, it is about consumers having the right to honest and clear information in receiving health services and in this case health facilities (hospitals) are the spearhead of health services<sup>17</sup> (Ministry of Health of the Republic of Indonesia 1999).

Law through the government must literally strive to protect and guarantee all the rights and obligations of the people and society so that they are carried out properly through various supporting tools such as positive law. The government is a representative and representative image of a country and has the aim of ensuring the balance and suitability of rights and obligations and assumes the responsibility of protecting all people and the nation in order to carry out the mandate of the fifth principle on social justice for all levels of society. This principle itself has a view that is not far from the meaning of legal protection in guaranteeing the rights and obligations of society. Some of the views regarding legal protection are explained by several experts as follows:

<sup>12</sup> Undang-Undang RI Nomor 36 Tahun 2014 Tentang Tenaga Kesehatan

<sup>13</sup> UU No. 29 Tahun 2004 Tentang Praktik Kedokteran

<sup>14</sup> PERMENKES RI No 269/MENKES/PER/III/2008

<sup>15</sup> Undang Undang No. 44 Tahun 2009 Tentang Rumah Sakit

<sup>16</sup> UU No. 36 Tahun 2009 Tentang Kesehatan

<sup>17</sup> Undang - Undang Republik Indonesia Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen

- a. Fitzgerald explained that law has the objective of integrating and regulating, also coordinating various interests within the community by limiting these interests.<sup>18</sup> (JP. Frtzgerald 1966).
- b. Pound argues that there are 3 types of interests protected by law which include: social, public and private interests.<sup>19</sup> (Powers 1953)
- c. Dworkin argues that “rights are something that has the highest value above the background of justification for political interests which is useful for fulfilling the goals of society as much as possible”<sup>20</sup>(Lawrence Friedman, n.d.)
- d. Rudolf Von Ihering and Jeremy Bentem argue that rights are a type of interest that must be protected and protected by law<sup>21</sup> (Peter Mahmud Marzuki 2006).
- e. Philipus M. Hadjon theorizes that legal protection for the people originating from the government comes from the concept of protection and recognition of human rights with a mechanism of limiting some limited aspects carried out by the community and government<sup>22</sup> (Philipus M. Hadjon 1987). Furthermore, Philipus M. Hadjon stated that there are 2 types of legal protection that apply in society, they are protection to prevent disputes (preventive legal protection) and law that has the aim of resolving disputes (repressive legal protection)<sup>23</sup> (Philipus M Hadjon 1994).

From all the explanations above, it is known that the medical record itself is part of a private legal aspect which in releasing data requires permission from the owner as well as laws and regulations. This is because the patient’s identity data is an aspect that is not like public law, in this case it is not related to general information such as disease transmission, health promotion, and others. On the other hand, is known that during the Covid-19 Pandemic there was an impetus for the disclosure of accurate and transparent medical information with the original objective of reducing the number of infections, with the consequence of injuring personal interests in the eyes of the law. Tracing in-depth analysis using the principle of public interest over personal interest, it is known that the opening of medical record data as long as it is within statutory limits is something which in quotation marks is good to reduce the number of incidents of the spread of Covid-19. This is quoted in Warella’s opinion which discusses “Public and private interests are in a continuum line which dynamically changes according to the situation at hand. The government as the guardian of the public interest must balance these two interests. Based on the philosophy of the state and societal values, the government should prioritize the public interest over narrow private interests, and demonstrate this principle in its policies. State officials must demonstrate and implement this principle. The public interest must be guaranteed by the rule of law, by demonstrating a strong commitment to the principle of “nothing is above the law”. Therefore, good governance is a must to create excellent service to the community. All of these principles are considered one another with the next problem is the implementation of these policies into practice.

In the context of the principle of personal data protection, health data is included in the category of sensitive and highly confidential data for the sake of one’s privacy, so that data management requires a more careful protection mechanism and guaranteed security. There are several laws and regulations that regulate the protection of personal data related to the health sector and access to health data, including; The Medical Practice Act, the Health Law, the Hospital Law, the Mental Health Law, the Health Workforce Law, and the Narcotics Law. “In Article 57 paragraph (2) of the Health Law it is stated that the exception in data protection, one of which can be done is in the interests of the community. But it must meet the principles of urgency and proportionality, meaning that it must be carried out strictly and in a limited manner,”

Furthermore, regulations regarding the confidentiality of patient medical records are regulated in Regulation of the Minister of Health (PMK) No.269/MenKes/Per/III/2008 concerning Medical Records, which obliges all health service providers to maintain the confidentiality of patient medical records. In Article 10 (2) of the regulation, it is stated that opening a medical history is possible for the benefit of health, fulfilling requests from law enforcement officials, requests from patients themselves, and for research or educational purposes as long as they do not mention the identity of the patient. Therefore, the Government and the Covid-19 team in every practice of collecting personal data from patients affected by Covid-19, including tracing location data must be carried out in accordance with the principles of prudence and in accordance with the laws of protecting personal data. The reason is, the potential for violations is very likely to occur with the implication of discrimination and exclusivity (exclusion) against the parties concerned. “For example, the first two positive cases of Covid-19 in Indonesia, whose personal data were widely disseminated, experienced discrimination and intimidation.

On the other hand, it is possible to restrict the protection of personal data for reasons of public health through a number of requirements. For example, there is a clear agreement from the data subject, and it is aimed at the vital interests of the data subject. “In addition, the actions taken must also be permitted by law, and meet the principles of urgency and proportionality,” Indonesia can learn from Singapore in disclosing positive patient data for Covid-19. Covid-19 news and status reports from the official website run by the Singapore government at [www.wuhanvirus.sg](http://www.wuhanvirus.sg), in no way reveal the personal identities of the corona positive patient. The personal identity of the suspected corona virus was also not disclosed. It is enough to provide a number for the patient. “The COVID-19 Singapore site displays a complete track record of activities and areas or locations visited by positive patients and suspected Covid-19, but only information about the location is displayed, without disclosing the patient’s personal identity.

<sup>18</sup> P. Frtzgerald. 1966. “Salmond on Jurisprudenc E,.” Sweet & Mazwell, Lindon, 53.

Kemenkes RI. 1999. “Undang - Undang Refublik Indonesia Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen,” 80.

<sup>19</sup> Powers, Francis J. 1953. “Some Reflections on Pound ’ s Jurisprudence of Interests” 3 (1).

<sup>20</sup> Lawrence Friedman. n.d. The Legal System: A Social Scine Perpective.

<sup>21</sup> Peter Mahmud Marzuki. 2006. Pengantar Ilmu Hukum. Jakarta: Kencana Prenada Media Group.

<sup>22</sup> Philipus M. Hadjon. 1987. Perlindungan Hukum Bagi Rakyat Di Indonesia. Surabaya: PT. Bina Ilmu

<sup>23</sup> Philipus M Hadjon. 1994. Pengkajian Ilmu Dogmatik (Normatif). Surabaya: Fakultas Hukum Universitas Airlangga.

Handling the Covid-19 pandemic has now become an important matter and not only involves the concept of healing the patient but also reducing the number of spread of the virus to reduce the number of new cases in the future. One of the alternative ways that can be used is by making use of strategic and actual data to support the continuity of handling a pandemic which encourages the potential to injure personal interests. Currently the Indonesian government enforces opening up very limited medical record data regarding the medical record data of Covid-19 sufferers by only providing data in the form of case numbers, age and area of residence. This has led to problems of encouragement and public pressure for the disclosure of public information which has led to the leakage of highly confidential medical record data and has the potential to cause further problems such as expelling people with Covid-19 from their residence or domicile and prohibiting burial of Covid-19 bodies.

Reflecting on all the cases above, the Indonesian government has actually implemented a policy for handling Covid-19 which is not significantly different from that in other countries with a reflection that<sup>24</sup> (OECD 2020)

- a. The Republic of Korea has implemented “Big Data” to record all patient medical record data with the aim of reducing the number of disease spreads
- b. Singapore, which tends to collect all relevant Covid-19 data without consent, does not openly disclose it to the public
- c. Several other countries have not disclosed the data to the public even though they have given the suspect label
- d. Only give case numbers to sufferers of Covid-19.

In handling Covid-19 in other countries, we can see that these other countries strongly guarantee and uphold the protection of patient personal data even though the government’s unilateral policy of accessing personal data is still implemented to carry out tracing actions related to early detection and prevention of Covid-19 transmission. This dualism is considered fair enough because the benefits generated from this policy are considered to be greater than the adverse effects obtained. This is in accordance with the public interest above personal interests by not overriding the principle of higher benefits than side effects.

In practice, Indonesia applies the principles of proportionality, necessities, and purposive limitation in handling confirmed Covid-19 patient data regulations, which means that there is a limit to the provisions for taking and accessing medical record data without neglecting the effect of justice for the greatest purpose of regulation a better policy if this is done with the consent of the data owner.

#### D. CONCLUSION AND SUGGESTIONS

The government guarantees and upholds the protection of patient personal data even though the policy of accessing personal data unilaterally by the government is still implemented to carry out tracing measures related to early detection and prevention of Covid-19 transmission. The Indonesian state applies the principles of proportionality, necessities, and purposive limitation in handling confirmed Covid-19 patient data regulations, which means that there is a limit to the provisions in taking and accessing medical record data without overriding the effect of justice for the greatest purpose of regulatory policies better if this is done with the consent of the owner of the data so that it does not injure individual rights

#### REFERENCES

##### Books

- Lawrence Friedman. n.d. *The Legal System: A Social Science Perspective*.  
Mertokusumo, Sudikno. 2005. *Mengenal Hukum Suatu Pengantar*. 1st ed. Yogyakarta: Liberty  
Peter Mahmud Marzuki. 2006. *Pengantar Ilmu Hukum*. Jakarta: Kencana Prenada Media Group.  
Philipus M. Hadjon. 1987. *Perlindungan Hukum Bagi Rakyat Di Indonesia*. Surabaya: PT. Bina Ilmu.  
Philipus M Hadjon. 1994. *Pengkajian Ilmu Dogmatik (Normatif)*. Surabaya: Fakultas Hukum Universitas Airlangga.  
Powers, Francis J. 1953. “Some Reflections on Pound ’ s Jurisprudence of Interests” 3 (1).

##### Law and Regulations

- Law No. 29 of 2004 About Medical Practice  
Law of the Republic of Indonesia Number 8 of 1999 about Consumers’ Protection  
Regulation of the Minister of Health of the Republic of Indonesia No. 269/MENKES/PER/III/2008.” *Regulation of the Minister of Health of the Republic of Indonesia No. 269/MENKES/PER/III/2008*  
Presidential Decree of the Republic of Indonesia Number 11 of 2020. ” Determination of Public Health Emergencies,  
Government Regulation Number 21 of 2020 Concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Coronavirus Disease 2019 / COVID-19  
Law of the Republic of Indonesia Number 14 of 2008 concerning Freedom of Information.  
Law No. 44 of 2009 concerning Hospital  
Law No. 36 of 2009 concerning Health  
Law of the Republic of Indonesia Number 36 of 2014 concerning Health Workers. "President of the Republic of Indonesia

##### Website

- Ravianto. 2020. “Kasus Pengusiran 3 Tenaga Medis Dari Tempat Kos, RSUD Langsung Laporkan Polisi, Ini Pembelaan Ibu Kost.” *Jabar Tribun News*, April 29, 2020. <https://jabar.tribunnews.com/2020/04/29/kasus-pengusiran-3-tenaga-medis-dari->

<sup>24</sup> OECD. 2020. “Ensuring Data Privacy as We Battle COVID-19.” OECD Policy Responses to Coronavirus, no. April: 1–4. <https://doi.org/10.1787/276aaca8-en>.

tempat-kos-rsud-langsung-lapor-polisi-ini-pembelaan-ibu-kost.

AHC Media. 2020. "Beating the Pandemic : What Emergency Providers Should Know About COVID-19." *Pediatric Emergency Medicine Reports*.

Ibrahim, Johnny. 2006. *Teori & Metodologi Penelitian Hukum Normatif. Teori Metodologi Penelitian A*.

JP. Frtzgerald. 1966. "Salmond on Jurisprudenc E.," *Sweet & Mazwell, Lindon*, 53.

Kemenkes RI 2020. "Situasi COVID-19." Kementrian Kesehatan RI. 2020. <https://doi.org/10.1017/CBO9781107415324.004>.

OECD. 2020. "Ensuring Data Privacy as We Battle COVID-19." *OECD Policy Responses to Coronavirus*, no. April: 1-4. <https://doi.org/10.1787/276aaca8-en>.

World Health Organization. 2020. "WHO Coronavirus Disease (COVID-19) Dashboard." World Health Organization. 2020.

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