



# DATA PROTECTION vs PANDEMIC TRACKING AND MEASUREMENTS

INTERNATIONAL WEBINAR LECTURE SERIES #1 PROPERTY LAW RESEARCH UNIT, AIKOL, IIUM

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ASSOC. PROF. SONNY ZULHUDA, PH.D

Ahmad Ibrahim Kulliyyah of Laws International Islamic University Malaysia



## **TIMELINE**

**Best** 

Concerns

and Way

**Forward** 

How PDPA during Pandemic

Data Processing during Pandemic

Practices during Pandemic

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Counterm easure and Policies

### Pandemic and Movement Control Order

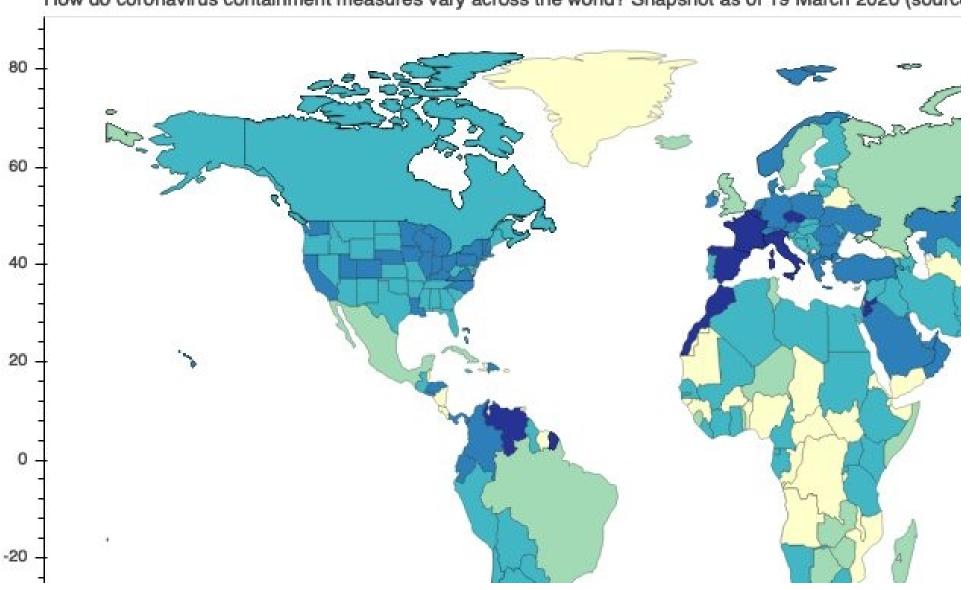
# ACT 342: PREVENTION AND CONTROL OF INFECTIOUS DISEASES ACT 1988 Section 11. Declaration of an infected local area.

...

- (2) The Minister may, by regulations made under this Act, **prescribe the measures** to be taken to control or prevent the spread of any infectious disease within or from an infected local area.
- (3) During the continuance in force of an order made under subsection (1), it shall be lawful for any authorized officer to direct any person or class or category of persons living in an infected local area or in any part thereof to subject himself or themselves-
  - (a) to treatment or immunisation;
  - (b) to isolation, observation or surveillance...; or
  - (c) to **any other measures** as the authorized officer considers necessary to control the disease.
- (4) It shall be lawful for an authorized officer to use such force, with or without assistance, as may be necessary and to employ such methods as may be sufficient to ensure compliance with any direction issued under subsection (3).

# Global Lockdown Measures per March 2020

How do coronavirus containment measures vary across the world? Snapshot as of 19 March 2020 (source



# **Reality Check in Malaysia**

- Pandemic control measures: Public screening, Patients profiling, Targeted prevention.
- Movement Control Order: lockdown measures, more online works, travel restriction, border control, movement tracking technologies.
- Increased online traffic leads to increased risk of cyber security and personal data breaches: scam, phishing attack, malicious software, misinformation, hate speech.
- Among data protection risks:
  - 1. Illicit requests of personal data for online services, Apps, etc;
  - 2. Fake accounts begging for donation, fake charities, etc.
  - 3. Rise of citizen news portals with unaccountable stories a testbed for phishing attacks.
  - 4. Unsecured online platforms prone to personal data breaches (online shopping, online meeting, social media, etc)

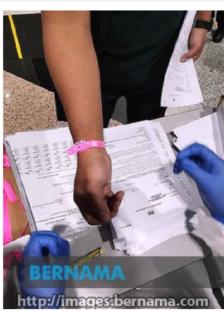


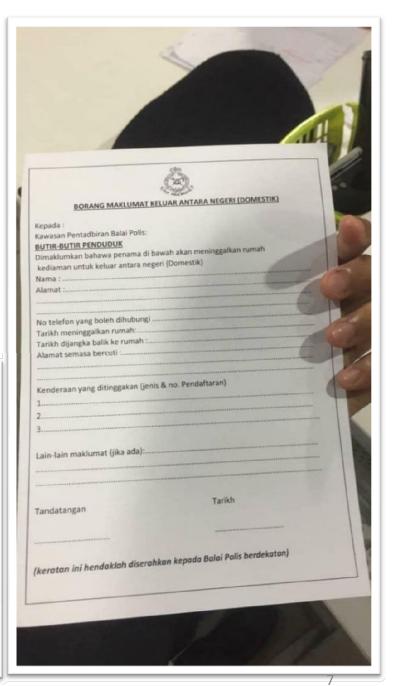
# UM researchers design digital thermometers that can collect real time data



















TOPICS > Pol

**Political Crisis** 

Covid-19 Watch

Asean+

True or Not

Do You Know

Star Golden Hearts Award

# Govt launches pilot project to monitor spread of Covid-19 pandemic via app

#### MOBILE APPS

Monday, 06 Apr 2020

5:15 PM MYT

By Qishin Tariq

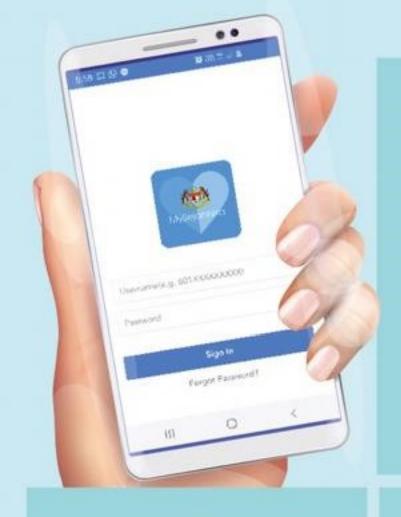




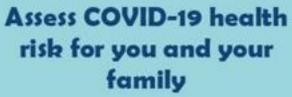


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Get COVID-19 F











#### MySejahtera

App permissions

Version 1.0.21 may request access to



· take pictures and videos

#### Quantity Location

- access precise location (GPS and network-based)
- access approximate location (network-based)

#### Telephone

· directly call phone numbers

#### Storage

- modify or delete the contents of your SD card
- · read the contents of your SD card

#### ? Other

- · android.permission.FLASHLIGHT
- · have full network access
- · view network connections
- · prevent phone from sleeping





#### **GERAK MALAYSIA**

App permissions

Version 2.6.73 may request access to

#### Camera

· take pictures and videos

#### Location

- access precise location (GPS and network-based)
- access approximate location (network-based)

#### **Telephone**

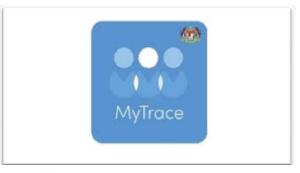
· read phone status and identity

#### Storage

- modify or delete the contents of your SD card
- · read the contents of your SD card

#### ? Other

- · run foreground service
- This app can appear on top of other apps
- · view network connections
- prevent phone from sleeping
- · view Wi-Fi connections
- receive data from Internet
- read Google service configuration
- · have full network access
- Play Install Referrer API
- · Pair with Bluetooth devices







#### MyTrace

App permissions

Version 1.0.30 may request access to

#### Location

- access precise location (GPS and network-based)
- access approximate location (network-based)

#### Storage

- modify or delete the contents of your SD card
- · read the contents of your SD card

#### ? Other

- run foreground service
- Access Bluetooth settings
- run at startup
- · have full network access
- · view network connections
- retrieve running apps
- · prevent phone from sleeping
- Play Install Referrer API
- · Pair with Bluetooth devices
- · receive data from Internet

# **How the Situation Triggers PDPA 2010**

An Act to regulate the processing of personal data in commercial transactions and to provide for matters connected therewith and incidental thereto.

- Applicability: "Personal data processing" in commercial transactions.
- Binding on: Data Users & Data Processors
- Excluded: Federal & State Government; Noncommercial transactions; Personal & Domestic purposes
- Passed in 2010, enforced in 2013.

# "Personal Data" is any information:

<u>in respect</u> of **commercial transaction**;

 any transaction of a commercial nature, whether contractual or not (includes goods, services, agency, employment, etc)

that <u>relates</u> directly or indirectly to a **data subject** 

 an individual who is the subject of the personal data (regardless nationality/residence)

Where that data subject is identified or identifiable

 from that information <u>alone</u> or from that <u>and</u> other information in data user's possession

<u>including</u> any **sensitive** personal data

 On his physical/mental health/condition, his political opinions, religious beliefs, the (alleged) commission of any offence

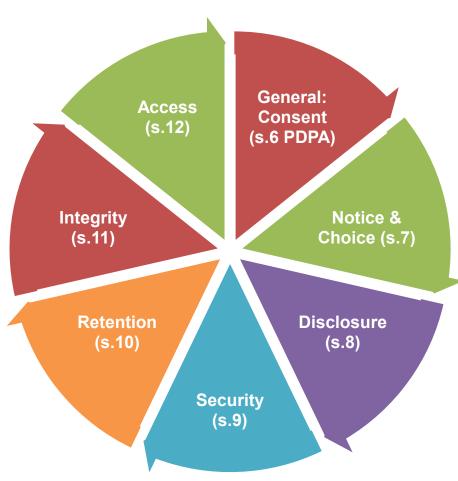
Including **expression of opinion** about the data subject

• e.g. data user's opinion his former employee

Processed by automated means
OR is recorded as part of relevant
filing system

 Thus it applies to both electronically processed data and paper-based document

## **Seven Personal Data Protection Principles**



Data user who contravenes the above Principles commits an offence and shall, on conviction, be liable to a fine not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

### What PDPA 2010 has done...

Regulates
processing of PII in
commercial
transactions

New sets of obligations for data users

New **offences** relating to data abuses etc.

Rights for individuals

Information governance and **Data due diligence** 

Promotes selfregulatory Codes of Practices

## And... creates new data offences

Breaching data protection principles

Failure to register as Data User (when applicable)

Unlawful collection of personal data Unlawful sale of personal data

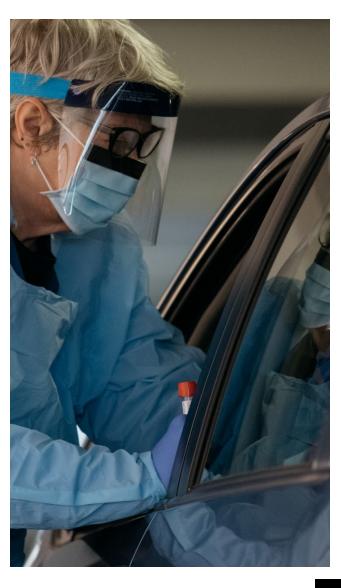
Breach of data security system

## **How the Situation Triggers PDPA 2010**



- A general exemption on the processing of personal data by Government (s. 3(1))
  - ➤ Is it a blanket exemption?
  - What about a third party working for the Government?
  - What about a private entity that exploits data in the pretext of complying with Government's Order?
- Sensitive personal data (section 4)
   "any personal data consisting of information as to the physical or mental health or condition of a data subject..."

## **How the Situation Triggers PDPA 2010**



- The processing of "sensitive data" (s. 40)
  - With explicit consent, or
  - Necessary processing, including to protect the vital interests of the data subject or another person.
  - Necessary for medical purposes by a healthcare professional or someone under confidentiality.
- "Medical purpose" includes the purposes of preventive medicine, medical diagnosis, medical research, rehabilitation and the provision of care and treatment and the management of healthcare services.
  - Mobile Apps on health assessment?
  - Plan of Apps on contract tracing?

# Partial Exemptions that Apply (s.45 PDPA 2010)

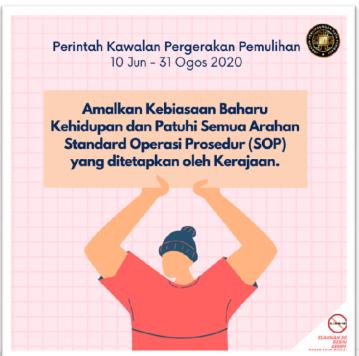
In relation to information of the physical or mental health of a data subject... shall be exempted from the Access Principle and other related provisions .. which would be likely to cause serious harm..

For preparing statistics or carrying out research shall be exempted from the General Principle, Notice and Choice Principle, Disclosure Principle and Access Principle and other related provisions of this Act,

provided that such personal data is not processed for any other purpose and that the resulting statistics or the results of the research are not made available in a form which identifies the data subject;

Also some partial exemptions apply on the **discharging** of regulatory functions and journalistic purposes.

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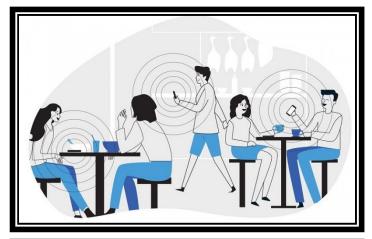








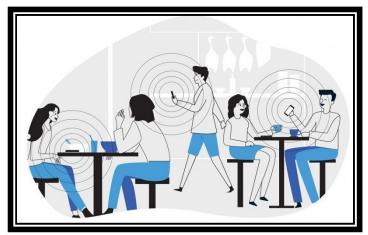
### **Other Concerns**





- Any 3<sup>rd</sup> party service provider is a data processor, thus subject to Security, Disclosure as well as Retention principles.
- Privacy policies on those initiatives will need to be notified and publicised to achieve transparency and to ensure due diligence.
- Privacy is not only a matter of PDPA compliance but also a common law rights for individuals.
- Room for improving the Law: e.g. Data breach notification duty, Data protection officer, Regulating data processor, and trans-border data transfer.

# **Conclusion & Way Forward**





- Pandemic is not a basis for relaxing the Rule. The Pandemic leads to system and governance vulnerabilities — Alert mode on data protection.
- The massive exemption given to the Government is not a "license" to downgrade their data protection.
- Private entities do not enjoy the same exemption. While complying with the rules is one of those, relaxing on data protection principles is not an option.
- As Malaysia is battling Covid-19, we shall strengthen trust and maintain sustainability. Relaxing data protection will only create **elements of distrust** among members of society and citizengovernment relationship.



# **THANK YOU**

**FEEDBACK:** sonny@iium.edu.my and http://sonnyzulhuda.com