

# The Legal Responsibility to the Family for Shackling People with Mental Illness During the Covid-19 Pandemic

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## Abstract

During the COVID-19 pandemic until June 2020, there were 277,000 mental health cases in Indonesia. The number increase compared to 2019. The number of shackling due to mental illness increased from 5,200 in 2019 to 6,200 in 2020. Shackling is strictly prohibited because it violates the law and human rights. Criminal sanctions in Article 333 of the Criminal Code are prepared for those who shackle people with mental illness. The punishment stipulated in this article is also applied to people who intentionally give space to the deprivation of other people's freedom. The program of "Indonesia Shackle-Free" was launched in 2010, the target was forced to be pushed back until 2019 and remains challenging to achieve. The number of shackling increases due to a lack of public understanding of mental health. This paper aims to explore further the relationship between the COVID-19 pandemic and the condition of people with mental illnesses (ODGJ) in Indonesia. Another impact of the COVID-19 pandemic on ODGJ is drug withdrawal because of the disruption of drug circulation during the pandemic. The allocation of health financing is also focused on dealing with the pandemic. Promotive efforts are expected to eliminate stigma, discrimination, and human rights violations for ODGJ in the community. Whereas, preventive efforts by developing parenting styles that support mental growth and development, communication, and education in the family are expected to provide appropriate mental health services for ODGJ when entering the rehabilitation stage.

**Keywords:** Shackling, People with Mental Illnesses (ODGJ), COVID-19

## Introduction

The Coronavirus disease (COVID-19) pandemic raises new problems for people's mental health. One that is closely related and affects mental health is social restrictions aimed at minimizing transmission of

the disease. Before the pandemic, as social creatures, people interacted directly with other people, but the current situation causes someone to limit direct interaction with others suddenly. It is complicated matters to some extent, especially in uncertain situations, which creates anxiety, worry, fear, stress, and even depression.<sup>1</sup>

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As the Ministry of Health noted, during the COVID-19 pandemic, there are 277,000 mental health cases in Indonesia. The number of mental health cases has significantly increased compared to 2019, with only 197,000 cases. The community's limited access and social problems experienced by the community

during the pandemic, which leads to depression, become the leading cause of mental health cases increasing number. Besides affected economically, people also experience stress and mental pressure due to layoffs and social restrictions.<sup>2</sup>

The Indonesian Psychiatric Association (PDSKJI) surveyed mental health through an online self-examination. The survey involved 1,552 respondents regarding the three psychiatric problems. It was anxiety, depression, and trauma. Based on the result, most respondents were women (76.1%), aged ranging from 14 to 71 years. Further examinations were carried out on 2,364 respondents in 34 provinces, and the results were not much different from the previous examination, with 69% of respondents had psychological problems, 68% had anxiety, 67% had depression, and 77% experienced psychological trauma.<sup>3</sup>

The family plays a crucial role in caring for people with mental illnesses (hereinafter referred to as ODGJ). The role of the family, among others, is related to treatment, such as delivering treatment, getting medicine, ensuring medicine consumption, and fulfilling daily life such as controlling personal hygiene and supervising daily activities. However, some families abandon them on the grounds since the status of ODGJ gives a bad image and creates discrimination by the community. The family feels ashamed and tries to cover up the existence of ODGJ in the family by ostracizing, expelling, and even taking shackles on them.

The stigma given by the surrounding community to the family members harms the recovery of ODGJ. It causes feelings of sadness, shame, irritation, shock, restlessness, and blaming each other, ultimately affecting the quality of treatment and daily life of ODGJ. Sometimes, the family will hide and even shackle ODGJ to avoid the lousy stigma and disturbing behaviors of ODGJ itself.<sup>5</sup>

The result of Moh. Abdul Hakim's survey has shown the impact of the COVID-19 pandemic on psychosocial conditions in Indonesia. It showed that 27% of the 1,319 participants experienced acute stress due to social restrictions, lack of basic needs, threats of infection, and behavioral adjustments. A similar survey conducted on the community and ODGJ by Ipsos MORI (Holmes et al., 2020) also showed concerns about social isolation or restrictions, increased anxiety, depression, stress, and other negative feelings, including financial difficulties, recurrence of pre-existing mental disorders, and difficulties in accessing mental health support and services.<sup>6</sup>

The increasing number of families who use shackles in caring for ODGJ becomes the critical point why it is necessary to write a paper outlining the legal responsibilities of the families who practice Shackling. This explanation needs to be studied to make the community, especially family, aware that shackling is included in violating human rights against ODGJ.

## Discussion

### Right of ODGJ to Receive Health Services and Free from Shackling

The arrangement of legal protection towards ODGJ in health services is included in Article 70 paragraph (1), Law No. 18 of 2014 on Mental Health (Mental Health Law), which describes ODGJ rights. These rights include the right to obtain mental health services in easily accessible health care facilities and to obtain protection from any form of neglect, violence, exploitation, and discrimination.<sup>7</sup>

Guarantees for ODGJ to have the same rights as citizens are also stated in Law No. 36 of 2009 on health, article 144 paragraph (1) and 148 paragraph (1) and (2). Based on this law, ODGJ receives equal treatment in every aspect of life, including health

services in easily accessible healthcare facilities according to mental health service standards. ODGJ's daily life should be protected from every form of neglect, violence, exploitation, and discrimination. All their social needs are met according to the level of mental illness through the family's involvement. As the government's hope, the ODGJ can achieve the best quality of life and enjoy a healthy mental life, free from fear and imprisonment.<sup>8</sup>

Director of Prevention and Control of Mental Health and Drug Problems, SitiKhalimah, explained an increase in shackling cases due to mental illness from 5,200 in 2019 to 6,200 in 2020. This increasing number is another impact of the COVID-19 pandemic. Shackling is strictly prohibited because it violates human rights (HAM). Therefore, the government has targeted Indonesia to be free from Shackling starting in 2010. However, because it is challenging works with much effort, it was postponed to 2014, then 2016, and the last to 2019.<sup>9</sup>In many cases, once the shackle is released, patients do not receive any further treatment, in the worst case, sometimes the patients are abandoned by their families. It is terrible since it triggers the recurrence of patient problems such as angry, threatening, even violent behavior towards themselves, others, and the environment. This situation occurs because of the lack of support from the family in the patient's ongoing treatments. Family support refers to attitude, action, and acceptance of the family towards the patients. In the view of family members, supportive people are always ready to provide help and assistance if needed.

#### **Treatment for ODGJ is Costly and Continued**

According to a study conducted by The Conversation in collaboration with the Center for Excellence in Science and Technology for the Pharmacy Service Innovation University of Padjadjaran, the average medical cost per patient per year was around Rp 3,307,931 for schizophrenia, Rp

17,978,865 for bipolar disorder, Rp 1,601,850 for depression, and Rp 1,190,563 for anxiety disorders. If it is assumed all patients get treatment for one year, then the highest direct cost nationally is the treatment for bipolar disorder, which reaches Rp 1.5 trillion, and the total cost for all cases of mental disorders can reach Rp 87.5 trillion. Despite the cost of treating ODGJ is covered by the Health Care and Social Security Agency (BPJS), in practice, patients and their families still have to bear the costs of transportation and other costs.<sup>10</sup>

The central government, regional governments, and the community not only must work hand in hand to prevent and strengthen health services through promotive, preventive, curative, and rehabilitative approaches. It must also be conducted in a comprehensive and integrated way, including the financing issues. All efforts need the collaboration of all parties since ODGJ needs continuous treatment, and it is costly.<sup>10</sup>

#### **Shackling in Indonesian Laws**

Shackling is contrary to human rights and legislation. The problem of shackling arises because ODGJ often goes on a rampage and endangers the environment and family. It is also supported by the lack of family knowledge about the legal impact of shackling. The shackling matter is regulated in Article 28 of the Constitution of the Republic of Indonesia. As stated, the right of everyone to have freedom of thought and conscience is not to be tortured or deprived.<sup>11</sup> The shackling of ODGJ is an act that makes them tormented since it forces ODGJs to stay in one place with their legs kept in chains. It is torturous because their freedom for regular activities as human beings is taken away. Shackling is also classified as an act of not respecting the personal rights of ODGJ. Therefore, the rights of ODGJ must be respected by the law even though they cannot state their rights.

According to Article 42 of Law No 39 of 1999 on Human Rights, ODGJ has the right to receive exceptional care, education, training, and assistance at the state's expense. The statement clearly explains that keeping ODGJ in shackles is a form of deprivation of human rights of freedom.<sup>12</sup> The act of deprivation includes giving no attention to the special care and treatment required by ODGJ. Moreover, the state guarantees the financing spent for exceptional care and assistance for ODGJ so that families should not carry out Shackling for ODGJ.

As stated in Article 147, Article 148 paragraph (1), and Article 149 of the Health Law, the central government, regional government, and the community are responsible for curing ODGJ by authorized health workers and are still respecting human rights. Shackling is contrary to the above provisions. It is not an attempt to cure and is not treated by authorized health workers, violating human rights. Treatment of ODGJ requires special and standardized health facilities and is performed by trained health workers instead of keeping the patient in Shackling. Article 148 paragraph (1) of the Health Law stipulates that ODGJs have the same rights as citizens, so they must be free from Shackling. Similarly, Article 149 of the Health Law clarifies that ODGJs must receive treatment in health care facilities rather than keeping them shackled.<sup>7,13</sup>

The state has guaranteed all treatment and care for ODGJ. There is no more space for the family to do Shackling. Shackling, as previously described, is a violation of human rights. It has the same meaning as deprivation of liberty which makes the condition of ODGJ get even worse. The state has declared Indonesia free from Shackling in 2019, but unfortunately, the program faced many obstacles and has not been realized. To support the program, Indonesia stipulates criminal sanctions against families who practice Shackling.<sup>13</sup>

Article 333 of the Criminal Code (KUHP) states, "Anyone who intentionally and unlawfully robs someone's freedom, or continues to deprive someone's freedom is threatened with a maximum imprisonment of eight years."<sup>14</sup> The punishment provided in this article is also applied to people who intentionally and unlawfully provide space for deprivation. The deprivation of ODGJ means taking someone's freedom to have daily activities without restrictions. Shackling can also result in serious physical injuries to ODGJ, and for this case, the threatened punishment is nine years. Moreover, if the Shackling result in death, the punishment for the perpetrator will be heavier; the threatened punishment is twelve years.<sup>14</sup> By seeing the criminal threats faced by families, the family should think twice about putting ODGJ in Shackling. Unfortunately, the lack of socialization and education to the public regarding the threat of criminal punishment against those in Shackling has made Shackling is still practiced.

#### The Role of the State and Families in Dealing with Shackled-ODGJ

Human rights are a dimension of human life. It is inherent in a person not because it is given by society or the state's goodness, but it is based on his dignity as a human being. The right to health is a fundamental right, and it is a basic human right inherent as the dignity of a human being. Fulfillment of the right to health for ODGJ is one of the main focuses for the government. The behavior and recurrence of ODGJ must be controlled to place them no longer discriminated against families and communities as they are giving lousy luck and cursed.<sup>12</sup>

Article 3 of the Mental Health Law states that mental health efforts aim to provide and guarantee mental health services for ODGJ based on human rights. Meanwhile, As stated in Article 3 letter G, mental health efforts aim to provide opportunities for ODGJ to obtain their rights as Indonesian citizens.

Referring to Article 3 letters C and G, Shackling is in big contrary to what is written in the two articles. Shackling is identical to depriving a person of human rights, negating guarantees of protection from the state, and violating someone's rights as an Indonesian citizen.<sup>7</sup> Regarding the Shackling, the government, through the Ministry of Social Affairs, had launched an Indonesia Shackle-Free in 2019. A noble vision considering the ODGJ should be treated like humans, in general, They are citizens whose rights must be protected by the government.

Integrated health efforts by the government, community, and family are needed in dealing with shackles. Several steps as follow:

1. The government needs to disseminate information on mental health actively. Eliminate the negative stigma against ODGJ as cursed individuals. It is undeniable that a lack of understanding of ODGJ creates various perceptions in society, stigma, and rejection. As explained by Nxumalo in his research report conducted in Kwazulu-Natal, stigma in ODGJ is a severe problem, has significant consequences for these ODGJs and their families.<sup>15</sup> Various stigma can afflict families with ODGJ, including isolation from the family, exploitation, neglect from the community, and labeling and stereotyping.<sup>16</sup> It is necessary to educate the public regarding myths and facts related to ODGJ to reduce the stigma experienced by families and ODGJ. Support from the community, basic education, and various government and private sectors are very much needed. Promotive efforts aimed at eliminating negative stigma, discrimination and violations against ODGJ as part of the community are contained in Article 7 letters b and c on the Mental Health Law.<sup>7,17</sup>

2. Shackles on ODGJ still occur due to some reason. First is the public's lack of understanding about mental health diseases. Then, one fact of the shackling is that the families do not know what they

have done by keeping the patients in chain robs the patient's rights. Third, the families do not know the legal consequences of doing shackling. Promotive efforts should be made to increase public knowledge about ODGJ. With a promotive effort, the community will handle ODGJ properly and know what to do, so there is no option to do shackles. It can be internalized in the family, educational institutions, workplaces, communities, health service facilities, mass media, religious institutions, places of worship, even in prisons and detention centers. In the family, the promotive effort focuses on parenting and communication patterns to support the growth and development of a healthy soul. In this case, it is very crucial to understand the risks of handling ODGJ with shackling, including the legal risk. The family must know all the risk as to the closest community to ODGJ.<sup>7,15</sup>

3. The family of ODGJ and the community are actively involved in eradicating shackling in Indonesia. The community now needs to report the shackling that occurred for ODGJ in their immediate environment to the authorities to avoid more cases of shackling. The role of the community is stated in Article 85, letter b of the Mental Health Law, which is to report the ODGJ in need.<sup>7</sup> ODGJ in shackling are included as a person in need. If the family does not have the awareness to free the shackled ODGJ, the community must report the incident of shackling to the authorities. It is expected that the shackled ODGJ can be released immediately. ODGJ has the right to have free life as citizens are the view the family must understand. A persuasive approach to families is needed. Another view the families must understand is that the state is responsible for protecting the right of ODGJ with the issuance of a law that regulates it. The family should be at the forefront of maintaining mental health and the first party to provide psychological help once mental health illness symptoms appear instead of carrying out shackling that violates the law and



human rights. As stated in Article 86 of the Mental Health Law, any person who intentionally detains, neglects, abuses, and induces others to detain, neglect, and violent the ODGJ or other actions that violate the ODGJ's human rights be punished following the provisions of the legislation.<sup>7</sup>

### Conclusion

Shackling is contrary to the provisions of laws and regulations. It has been regulated regarding the prohibition of shackling on ODGJ. Something to improve is the implementation, and it is expected that a sense of justice is obtained for all ODGJ, and the target for Indonesia free from shackling is achieved. The responsibility for the families of ODGJ is to increase understanding that shackling is an unlawful act and can be criminalized. Families also need to provide accurate and fast information to health service providers to provide appropriate care for ODGJ. Therefore, the ODGJ becomes productive and independent human beings like others.

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