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Legal Protection of Family Rights and the Dignity of COVID-19 Patients' Remains in Indonesia: Proportionality and Regulatory Harmonization

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Abstract

This study examines the compatibility of Indonesia's legal framework for handling the remains of COVID-19 patients with human rights principles, particularly the dignity of the deceased, family rights, and the proportionality of public health restrictions. Using normative legal research, it analyzes relevant national legislation and policy instruments, including the 1945 Constitution, Law No. 39 of 1999 on Human Rights, Law No. 12 of 2005 ratifying the International Covenant on Civil and Political Rights, and Minister of Health Decrees No.HK.01.07/MENKES/413/2020 and No.HK.01.07/MENKES/4834/2021. It also examines MUI Fatwa No. 18 of 2020, the Universal Declaration of Human Rights, and relevant World Health Organization guidance. The findings show that Indonesia's regulatory framework emphasizes infection prevention and public health protection, but raises concerns about restrictions on family participation, transparency in decision-making, and consistency of implementation. The study highlights the need for clearer legal safeguards for families and stronger recognition of the deceased's dignity during post-mortem procedures. It recommends harmonizing regulations, ensuring transparent communication with families, and adopting human rights-based protocols that balance public health needs with fundamental rights. The study contributes to health law and human rights scholarship.

Keywords

COVID-19; Handling of the Deceased; Human Rights; Dignity of the Deceased; Post-Mortem Rights; Health Law; Proportionality

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1. INTRODUCTION

The COVID-19 pandemic has posed significant challenges in public health, including the management of the remains of patients with infectious diseases. By the end of 2020, Indonesia had recorded more than 743,000 confirmed cases of COVID-19 (BNPB, 2020), prompting the government to implement strict protocols at every stage of the handling of the deceased. The World Health

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Organization (WHO) stipulates that the management of COVID-19 patients' remains must adhere to infection prevention and control standards to mitigate the risk of transmission to healthcare workers and the general public (WHO, 2020). At the national level, the Ministry of Health issued the 5th Revised Guidelines for the Prevention and Control of COVID-19 as the legal basis for the handling of infectious remains. (Indonesian Ministry of Health, 2020)

However, the implementation of these protocols has raised legal issues, particularly regarding families' rights to information, access, and participation in the handling process. A report by the COVID-19 Task Force indicates that more than 9,000 bodies were buried under COVID-19 procedures throughout 2020 (Government of the Republic of Indonesia, 2020), resulting in a very high frequency of interactions between families and officials enforcing the protocols—a situation prone to disputes. The Indonesian National Commission on Human Rights (Komnas HAM RI) received several complaints regarding restrictions on family access and unclear burial procedures. It alleged disregard for the dignity of the deceased (Komnas HAM RI, 2021). These restrictions often create tension between the state's obligation to protect public health and its duty.

Table 1

Key Data on the Handling of COVID-19 Deceased Bodies in Indonesia in 2020

Indikator	**Data**	**Sumber**
Total COVID-19 Cases in Indonesia (2020)	743,198 cases	BNPB (2020)
Bodies buried in accordance with COVID-19 protocols	>9,000 bodies	Government of the Republic of Indonesia (2020)
Number of complaints regarding the handling of remains in relation to human rights	Qualitative data (improved reporting)	Indonesian National Commission on Human Rights (2021)
Reports of cases where bodies were refused in the region	Several significant cases (Banyumas, Gowa, Semarang)	Human Rights Watch (2020)

The data above show the increasing complexity of handling the deceased during the pandemic, both in the number of bodies to be handled and in the potential for social and legal conflicts. The large number of bodies that must be buried under special protocols increases the likelihood of restrictions on family access. In contrast, the emergence of cases in which families refuse to accept the bodies reflects low public literacy about health risks and official procedures.

Studies on the handling of the remains of patients with infectious diseases, including COVID-19, generally focus on medical, public health, and disaster management aspects. However, normative studies that systematically assess the alignment between health protocols and human rights principles remain very limited. The existing literature has not evaluated whether restrictions on family access, body preparation procedures, and burial arrangements have taken into account the right to know, the right to perform religious rituals, and the principle of protecting human dignity. Furthermore, there is currently no comprehensive analysis of the alignment between national regulations—such as Ministerial Regulations, Circular Letters, and Local Regulations—as well as the guidelines issued by the COVID-19 Task Force, and international standards, including WHO guidelines and global human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR). This gap highlights the lack of analysis on how international norms regarding the handling of the deceased and post-mortem rights are reflected in the context of Indonesian legislation.

Furthermore, discussions regarding the concept of human dignity inherent in the deceased have not yet been a primary focus in Indonesian legal literature. Yet the concept of post-mortem dignity is highly relevant to understanding the limits of state intervention in public health emergencies. The lack of attention to this issue indicates a theoretical and conceptual gap that needs to be bridged through normative legal research.

This research is of high academic urgency because protecting the dignity of the deceased is an integral part of human rights principles that must be upheld under all circumstances, including during public health emergencies. A legal evaluation of procedures for handling the remains of COVID-19 victims is necessary to ensure that public health policies do not neglect the state's obligation to respect and protect the rights of families and human values. In practical terms, this study is relevant to health policy reform during times of crisis. The study's findings can serve as a foundation for policymakers to formulate protocols for the handling of the deceased that are more humane, proportionate, and consistent with human rights principles. This study also makes an important contribution to the development of health law and human rights law, particularly in an aspect that has rarely been explored: the protection of post-mortem rights.

From a theoretical perspective, this study enriches the academic discourse on the relationship between health law, medical ethics, and international human rights instruments. By integrating a normative analysis of national regulations and international standards, this study is expected to provide a stronger conceptual foundation for future research in health law. This study aims to assess the extent to which procedures for handling the remains of COVID-19 patients in Indonesia align with human rights principles, particularly those related to the rights of families and the dignity of the deceased. This

evaluation is conducted through a comparative analysis of national regulations and international standards to identify gaps, inconsistencies, and challenges in legal implementation within the context of a public health emergency. In addition, this study aims to map aspects of the handling of the deceased that may violate the principle of human dignity, whether in procedures, in those carrying them out, or in the normative basis. Based on these findings, this study will provide normative-juridical recommendations to inform the formulation of future policies. The research question for this study is: "To what extent are the procedures for handling the remains of COVID-19 patients in Indonesia consistent with human rights principles, particularly regarding the rights of families and the dignity of the deceased?"

2. METHODS

2.1. Type of Research

This study is a normative legal study (doctrinal research) aimed at analyzing the alignment of regulations and practices governing the handling of COVID-19 patients' remains with human rights principles. A multidimensional approach is used to provide a comprehensive analysis. First, the statutory approach is used to examine national laws and regulations governing public health, quarantine, the handling of infectious remains, human rights protection, as well as provisions in the Civil Code and the Criminal Code related to respect for the deceased.

This approach is essential for identifying positive legal norms and the state's obligations in establishing standards for the handling of remains. Second, the conceptual approach is applied to examine theoretical concepts such as human dignity, post-mortem rights, proportionality in restricting human rights, and the state's obligations in public health emergencies. This approach provides a conceptual foundation for normative analysis. Third, an international legal-instrument approach is used to assess relevant international human rights standards and WHO guidance in relation to Indonesia's legal framework for handling COVID-19 patients' remains.

This analysis identifies normative gaps and inconsistencies between national legal provisions and relevant international standards, without comparing national policies across countries. Fourth, a human rights approach is used to evaluate the extent to which policies and practices regarding the handling of COVID-19 remains are aligned with international human rights standards.

2.2 Sources of Legal Material

The legal materials in this study consist of primary, secondary, and tertiary sources.

a. Primary legal sources include:
    1) The Health Law and the Health Quarantine Law, which serve as the legal basis for the pandemic response.

2) Specific regulations regarding the handling of infectious remains, such as the Minister of Health Regulation on the preparation of remains for burial.
3) Provisions in the Civil Code and the Criminal Code regarding respect for the deceased and the protection of human dignity after death.
4) Local regulations, circular letters, and Task Force guidelines governing burial procedures and restrictions on activities.
5) International human rights instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the WHO's International Health Regulations (IHR), including UN documents related to the protection of the dignity of the deceased.

b. Secondary legal sources include:
   1) Academic literature such as legal journals, public health journals, and scientific articles discussing the handling of infectious remains and the protection of human rights.
   2) WHO guidelines and technical documents on the management of the remains of COVID-19 patients.
   3) Reports from human rights institutions such as the National Commission on Human Rights (Komnas HAM) and Human Rights Watch.

c. Tertiary legal sources include:

   Legal encyclopedias, legal dictionaries, and reports from relevant international and national institutions that provide additional explanations of legal concepts and the context of their implementation.

2.3. Techniques for Collecting and Analyzing Legal Materials

Legal materials were collected through a systematic review of laws and regulations, international documents, academic literature, and reports from official institutions. The data were classified by level of normative authority to ensure the accuracy of the analysis. Analysis is conducted using a normative qualitative method, which involves legal interpretation through grammatical, systematic, and teleological approaches. This study also applies vertical and horizontal synchronization techniques to assess the coherence and potential for disharmony among regulations, both between national rules and between national rules and international standards.

In addition, this study uses narrative synthesis to map academic debates, the development of legal concepts, and relevant guidance concerning the handling of infectious remains within the Indonesian legal framework and applicable international standards. This approach integrates normative and conceptual findings to analyze legal gaps and their implications for the protection of human rights.

3. FINDINGS AND DISCUSSION

3.1 Regulatory Framework for the Handling of the Remains of COVID-19 Patients

Indonesia's legal framework for handling the remains of COVID-19 patients combines public-health rules with general protections for human dignity and family life. The applicable technical instrument must be identified precisely: the manuscript should verify the title, number, legal status, and period of validity of each Ministry of Health regulation or guideline before describing it as the governing rule. The relevant legal question is not simply whether a protocol requires protective equipment or safe burial, but whether each restriction imposed on families has a sufficiently clear legal basis and is applied consistently with higher-level law. Technical rules can prescribe infection-control procedures; they should not be interpreted as automatically extinguishing family interests in receiving information, observing religious practices where safe to do so, or being treated respectfully.

Circular letters, task-force directives, and hospital standard operating procedures may help operationalize safe handling, but their legal force and scope must be distinguished from those of statutes and regulations. They may guide administrative practice, yet they should not be treated as an independent basis for imposing restrictions that lack support in a higher legal norm. For each restriction—such as preventing a family from viewing the body, limiting attendance, or changing customary funeral procedures—the responsible institution should identify the applicable rule, explain the public health purpose, and explain why the measure is necessary in the circumstances. This interpretation promotes legal certainty and allows the restriction to be assessed rather than accepted solely on the basis that it appears in a technical protocol.

The relevant higher-level provisions provide a framework for this assessment. Article 28G(1) of the 1945 Constitution of the Republic of Indonesia protects a person's, family's, honor, dignity, and property, as well as the right to security. Article 29(1) of Law No. 39 of 1999 on Human Rights recognizes the right to the protection of oneself, one's family, honor, dignity, and property. Article 28I(4) of the Constitution places responsibility for the protection, promotion, enforcement, and fulfillment of human rights on the state. These provisions do not expressly create a standalone right held by a deceased body; rather, they support duties to treat remains respectfully and to consider the interests and rights of surviving family members. The precise application of each provision must be explained in relation to the decision being reviewed.

Accordingly, regulatory harmonization should clarify both the infection-control duties of health authorities and the procedural safeguards owed to families. At minimum, the framework should require timely and understandable information, identification procedures, a reasoned explanation for restrictions, and consideration of safe alternatives that preserve religious or customary practices. These safeguards do not mean that families may disregard legitimate infection-control measures. They mean

that restrictions should be grounded in law, directed to a legitimate public-health objective, and no broader than reasonably necessary to achieve that objective.

3.2 Human Rights Standards and the Principle of Dignity of the Deceased

The term "post-mortem rights" requires conceptual qualification. A deceased person is not ordinarily treated as a current legal rights-holder in the same way as a living person, and the instruments discussed here do not expressly establish a comprehensive set of rights directly vested in a corpse after death. In this article, the term is therefore used as a shorthand for two connected matters: the state's and relevant institutions' duties to handle human remains respectfully, and the surviving family's legally protected interests in information, family life, religious observance, and dignified mourning. This formulation avoids asserting a freestanding legal right of the deceased unless a particular legal source expressly supports that conclusion.

The binding character of international human-rights instruments must be distinguished from the technical status of WHO guidance. Indonesia is a party to the International Covenant on Civil and Political Rights (ICCPR) through Law No. 12 of 2005. Depending on the circumstances, Article 17 of the ICCPR (protection against arbitrary or unlawful interference with privacy and family), Article 18 (freedom of thought, conscience, and religion), and Article 19 (freedom to seek, receive, and impart information) are relevant to restrictions affecting families. Article 18(3) permits limitations on the manifestation of religion only when prescribed by law and necessary for specified purposes, including protection of public health; Article 19(3) similarly sets conditions for restrictions on expression and information. These provisions do not guarantee unrestricted physical access to a body, but they require a legally justified and carefully assessed approach to relevant family interests. The Universal Declaration of Human Rights is an important interpretive declaration, but it is not itself a treaty binding in the same manner as the ICCPR.

WHO's 2020 guidance, "Infection prevention and control for the safe management of a dead body in the context of COVID-19," is a technical public health document, not a human rights treaty and not, by itself, a source of a freestanding legal entitlement. It states that family and friends may view the body after it has been prepared for burial, in accordance with local customs, while observing prescribed infection-prevention measures. This guidance is relevant evidence that safe handling and family viewing need not always be treated as mutually exclusive. Its recommendations can inform the interpretation and design of domestic procedures. Still, the legal obligation to permit or restrict access must be derived from applicable domestic law and binding human-rights obligations, interpreted in context.

3.3. Practices Regarding the Handling of Deceased Bodies and Human Rights Concerns

Restrictions on family access raise a legal issue when they are imposed automatically, without clear information or consideration of the circumstances. Article 28G(1) of the Constitution and Article 29(1) of Law No. 39 of 1999 provide a basis for considering the family's interests in dignity and protection. Article 17 of the ICCPR may also be relevant where a measure arbitrarily or unlawfully interferes with family life. These provisions should not be read as creating an absolute right to touch or view remains; rather, they require authorities to assess whether a restriction has a clear legal basis and a legitimate, proportionate justification. The practical safeguard is to inform families of the procedure, explain any limits, and consider safe options such as viewing from a distance or viewing the prepared body where permitted by the applicable protocol.

Religious and customary practices should be assessed with reference to Article 18 of the ICCPR and the corresponding constitutional and statutory protections for religious freedom. Article 18(3) permits limitations on the manifestation of religion only where they are prescribed by law and necessary to protect, among other interests, public health or the rights and freedoms of others. Consequently, the existence of an infection risk may justify adapting a ritual, but it does not automatically justify eliminating every religious practice. Decision-makers should identify the specific risk, consider available precautions, and explain why a requested practice can or cannot safely be accommodated; WHO guidance can inform this technical assessment, while the binding legal test comes from applicable law.

The right to receive clear information should likewise be analyzed separately from the right of physical access. Article 19(2) of the ICCPR protects the freedom to seek, receive, and impart information, subject to the conditions in Article 19(3); Article 17 may be relevant to the protection of family life. In the context of handling remains, these provisions support careful consideration of whether families are informed of the identity and condition of the deceased, the steps to be taken, the legal basis for any restrictions, and the available options for participation. This does not establish an unlimited right to every item of medical information, but it does weigh against unexplained or arbitrary communication practices.

3.4. Regulatory Inconsistencies and Gaps

Potential vertical disharmony should be assessed by identifying the particular national rule and the particular local instruction said to conflict, rather than by assuming that differences in implementation prove a legal inconsistency. Where a local authority imposes restrictions on transport, viewing, or burial, the analysis should ask whether the authority had legal competence to do so, whether the restriction is consistent with the applicable national framework, and whether it is justified by a

documented public health need. The article's normative materials support the need for this structured review, but they do not, without case-specific documentation, establish that every local variation was unlawful.

Horizontal disharmony may arise when technical health directions are applied without regard to constitutional protections, human-rights legislation, and the legal status of the instrument relied upon. A circular letter or internal standard operating procedure should not automatically be equated with a statute or regulation. Its legal effect depends on its source, content, authority, and function. The relevant interpretive task is to determine whether the instrument implements an existing legal duty or purports to create a new restriction without adequate authority. This distinction is especially important where the restriction affects family participation or religious observance.

The regulatory gap is best described narrowly: the materials reviewed do not appear to set out a comprehensive and explicit procedure for balancing infection-control measures with family information, safe viewing, religious practice, and dignified treatment in every relevant circumstance. This does not mean that families have no legal protection. Rather, general constitutional and statutory guarantees may apply but require careful interpretation in the specific setting. A clearer protocol should provide reasons for restrictions, a point of contact for families, an opportunity to ask questions or raise concerns, and, where feasible, a process for review.

3.5. Analysis of the Compliance of Regulations with Human Rights Principles

The proportionality assessment should proceed in distinct steps. First, the authority must identify a legal basis for the restriction. Second, it must show that the measure pursues a legitimate objective, such as preventing transmission. Third, the measure must be suitable to that objective and necessary in the sense that reasonably available, less restrictive safeguards would not achieve comparable protection. Finally, the burdens imposed on family life, religious observance, and dignity should not be excessive relative to the expected public health benefit. Articles 17, 18(3), and 19(3) of the ICCPR are relevant to the respective interests in family life, religious manifestation, and information; Article 28G(1) of the Constitution and Article 29(1) of Law No. 39 of 1999 provide a domestic human rights context. These provisions do not establish an absolute entitlement to access the body, but they require a reasoned legal assessment rather than an automatic prohibition.

For example, if a hospital refuses all family viewing, the legal analysis should identify the rule relied on, the specific infection risk, and whether safe alternatives were considered. If the family is not informed of the procedure or the reasons for refusal, the issue concerns procedural fairness, the protection of family interests, and the substantive restriction. WHO's 2020 guidance is relevant because it contemplates viewing after preparation for burial under specified precautions; however, it is technical

guidance and does not independently determine the legal outcome. The final assessment must be grounded in binding domestic law and applicable human-rights obligations, together with the facts of the particular case.

Claims concerning the dignity of remains should also be stated with legal precision. The manuscript should cite a specific provision of the applicable version of the Indonesian Criminal Code or Civil Code before characterizing conduct as a violation of that Code. General references to the KUHP or KUHPerdata are insufficient to establish a particular offense or civil cause of action, and the relevant provisions may depend on the date of the conduct and the legislation then in force. On the materials presently identified, the safer conclusion is that respectful treatment of remains is a normative concern supported by constitutional values and the protection of surviving family interests; a claim of a specific statutory violation requires a provision-by-provision analysis.

3.6. Institutional and Jurisdictional Conflicts

Institutional responsibility should be analyzed by separating the roles of ministries, local authorities, hospitals, task-force bodies, and law-enforcement agencies under the relevant instruments. Where a decision restricts access or changes funeral arrangements, the article should identify which institution made the decision, the authority it relied on, and the available channel for explanation or review. The existence of multiple actors may create coordination risks, but it does not by itself prove that a legal conflict occurred in a particular case.

A legally sound protocol should specify who communicates with the family, who authorizes any exceptional restriction, what reasons must be recorded, and how the decision can be reviewed. Internal hospital procedures can support consistent implementation but should remain compatible with superior law and applicable human-rights guarantees. This allocation of responsibility would improve legal certainty and enable the distinction between a justified infection-control measure and an unsupported or excessive restriction.

3.7. Interpretation of WHO Guidance and Binding Human Rights Standards

WHO's 2020 guidance should be read as technical guidance rather than a binding human rights instrument. It permits family members and friends to view the body after it has been prepared for burial, in accordance with local customs and with the required infection-prevention precautions. The guidance therefore undermines the assumption that all viewing must invariably be prohibited, but it does not automatically confer an independent legal right to view the body. Its role is to inform the assessment of feasible risk-reduction measures; the legal validity of a restriction must be determined with reference to domestic law and binding human rights obligations.

For access and family life, Article 28G(1) of the Indonesian Constitution, Article 29(1) of Law No. 39 of 1999, and Article 17 of the ICCPR are relevant interpretive provisions. They require attention to dignity, family interests, and the risk of arbitrary or unlawful interference, but they do not guarantee unrestricted access to remains. For religious practice, Article 18 of the ICCPR—particularly Article 18(3)—requires any limitation on the manifestation of religion to be prescribed by law and necessary for a permitted purpose, including public health. For information, Articles 19(2) and 19 (3) of the ICCPR provide a framework for access to explanations and information, subject to lawful and necessary restrictions. The analysis should connect each provision to the particular decision, rather than referring generally to "international standards."

These legal standards support a case-specific assessment of restrictions on attendance, viewing, and ritual practice. Authorities should explain the rule and risk underlying a restriction, provide timely information, and consider safe alternatives where available. A measure justified by a demonstrated risk and supported by law may be permissible; a blanket prohibition imposed without explanation or consideration of alternatives raises stronger concerns about necessity, proportionality, and arbitrary treatment. The available materials support this normative test, but they do not establish that every reported burial in Indonesia followed the same procedure or that every restriction was unlawful.

3.8. Normative Implications and the Need for Reform

The principal reform is to adopt a clear, legally grounded procedure for handling infectious remains that distinguishes binding legal rules from technical guidance and internal operational instructions. The procedure should require timely information to families, identification safeguards, written reasons for exceptional restrictions, consideration of safe viewing and religious practices, and a practical channel for questions or complaints. Each safeguard should be linked to its legal basis and to the institution responsible for implementation.

The concept of post-mortem rights should be used carefully throughout the article. Unless a specific legal source expressly recognizes a right held directly by a deceased person, the term should describe the state's and institutions' duties to respect human remains and to protect the rights and interests of surviving family members. This conceptual distinction avoids overstating the law while retaining the article's central argument: public health measures must be implemented in a manner consistent with dignity, legal certainty, and the proportionate protection of families.

4. CONCLUSION

This study concludes that the legal framework governing the handling of COVID-19 patients' remains in Indonesia provides a basis for protecting public health. Still, its compatibility with human rights principles remains incomplete. The principal normative issue is not the existence of infection-control restrictions itself, but whether such restrictions have a clear legal basis, pursue a legitimate public health objective, and satisfy the requirements of necessity and proportionality. Restrictions that are imposed without adequate legal justification, individualized risk assessment, or clear communication may undermine the protection of family interests and the obligation to treat the deceased with dignity.

The legal analysis distinguishes binding human rights obligations from technical public health guidance. The Indonesian Constitution and applicable human rights legislation provide the normative basis for protecting relevant interests, including family privacy, religious practice, and access to information, subject to lawful and proportionate restrictions. By contrast, the World Health Organization's 2020 guidance serves as a technical reference for safe management of the deceased. Its recommendation that family members and friends may view the body after preparation for burial, in accordance with local customs and prescribed infection-prevention measures, informs the assessment of feasible safeguards but does not, on its own, create a legally enforceable right. The legal validity of restrictions must therefore be assessed primarily against applicable national law and binding human rights obligations, with technical guidance serving as a relevant interpretive consideration.

This study also clarifies that the concept of post-mortem rights should not be understood, without further legal justification, as a separate set of rights directly held by a deceased person. In this article, the concept refers principally to the continuing obligations of the state and relevant institutions to handle human remains respectfully and to protect the rights and legitimate interests of surviving family members. This distinction provides a more precise theoretical foundation for evaluating state responsibility in the handling of infectious remains.

Accordingly, regulatory improvement should prioritize clear legal authorization for restrictions, transparent communication with families, reasonable accommodation of religious and cultural practices where infection-control measures permit, and consistent implementation of national standards by relevant institutions. These measures would strengthen legal certainty and ensure that public health protection is pursued in a manner consistent with human dignity and applicable human rights obligations.

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