



Relevance of MySejahtera Application in Post-pandemic Era: Legal Regulations on Data Ownership and Privacy

Xi Xian Tong and Eng Siang Tay^(✉)

Faculty of Law, Multimedia University, Melaka, Malaysia
estay@mmu.edu.my

Abstract. MySejahtera application has been adopted by the Malaysian government since the outbreak of COVID-19 pandemic in March 2020. It is a digital tracing tool with functions, amongst others, to assist the government to monitor and control the spreading of the COVID-19 cases. Data ownership and privacy are always a controversial issue especially when the MySejahtera application was developed by a private company under corporate social responsibility. The government has assured that the data and information kept in MySejahtera application are fully owned by the Ministry of Health. From 1 April 2022, Malaysia has entered the transition to the endemic phase of COVID-19. The Ministry has further announced the relaxation of all SOPs starting 1 May, which include the doing away with MySejahtera. The recent Public Accounts Committee report discloses the selling of such an application to another private company has again raised the fear of intrusion of data ownership and privacy. This paper will address the issues on the data ownership and privacy of the MySejahtera application and discuss the relevance of continuing to use MySejahtera in daily life in the post-pandemic era. Existing legal regulations such as Personal Data Protection Act 2010, Prevention and Control of Infectious Diseases Act 1988, Communication and Multimedia Act 1988 and Medical Act 1971 will be examined in addressing the above issues. The research method used in this paper is doctrinal legal research. This paper will conclude with suggestions on the amendment to the relevant legislations to safeguard the data privacy of the MySejahtera users.

Keywords: data ownership · data privacy · digital tracing · MySejahtera application

1 Introduction

On 31 December 2019, the reports of a cluster of cases of “pneumonia of unknown cause” in Wuhan, China caught the attention of the world [1, 2]. On 11 February 2020, this novel coronavirus was officially named COVID-19 by the World Health Organisation (WHO) [3]. On 11 March 2020, COVID-19 was officially categorised by WHO as a pandemic [3].

The first COVID-19 case in Malaysia was reported on 25 January 2020 which involved three Chinese citizens who were in close contact with a COVID-19 patient

in Singapore [4]. On 4 February 2020, it was reported the first Malaysian contracted COVID-19 is a 41-years old who has participated in a conference in Singapore and later developed the symptoms after he was back to Malaysia [5]. Thereafter, the cases of COVID-19 were steadily increasing from single-digit to three-digit number of reported cases on 16 March 2020 [6]. On 16 March 2020, the Malaysia government started to take some countermeasures to handle the rising cases of COVID-19. A 14-days of Movement Control Order was implemented, starting from 18 March to 31 March, to curb the spread of COVID-19 infection [6].

Among the countermeasures taken by countries to monitor and curb the spreading of COVID-19 infection, contact tracing is a traditional way to flatten the curves of COVID-19 cases. Contact tracing is a method that identifies the potentially infected person who was in close contact with identified infected individuals and is followed up by treatment of isolation [7]. This method is a recommended control strategy to control the airborne spread of diseases, but if the average number of infections is large, it has to be far more rapid [7]. This method helps to ease the burden of the public healthcare system when it prioritises tracing the individuals with many contacts [7].

Digital contact tracing is an advanced method of traditional contact tracing. It mainly relies on the advancement of technology, for example, Bluetooth, Global Positioning System (GPS), Wi-Fi signals, and other smartphone sensors, to identify the potential contacts, and followed up with isolation [8]. This app- based contact tracing is better than traditional contact tracing as it addresses the issues of limitations of scalability, notification delays, recall errors, and contact identification in public spaces [8]. However, certain trade-offs between privacy and the effectiveness of this method are needed to be made [8].

Malaysia is one of the countries that adopted digital contact tracing to curb the spread of COVID-19 infections. On 20 April 2020, the Ministry of Health launched the application “MySejahtera”, which is for monitoring the COVID-19 pandemic and providing guidelines for potential contractors [9]. One of its functions is to conduct digital contact tracing to potentially infected individuals. Other than that, it also carries some other important functions that will be discussed in this paper.

After MySejahtera was launched, there were some controversies concerning privacy issues. Studies show perceived privacy credibility is one of the factors that is affecting the intention of the public to use MySejahtera [10, 11]. However, notwithstanding the high awareness of Malaysian citizens towards their personal data in MySejahtera, since it is a compulsory measurement in combating the COVID-19 pandemic, the privacy concern is overridden by the enforcement order of the Malaysia government [11]. The privacy issues of MySejahtera users were raised again after the opposition leader raised his concern over the decision of the government to sell MySejahtera to a private company [12]. Answering the privacy concerns, the current Minister of Health denied that MySejahtera has been sold to a private company and stated all the information and data in MySejahtera are fully owned by the government and will only be used for the purposes of combating the COVID-19 pandemic [13, 14]. After the public concerns about the safety and ownership of MySejahtera users’ data, there was a sharp drop in MySejahtera usage, and the privacy concerns may be one of the possible reasons for its causes [15]. Nonetheless, the main function of MySejahtera, which is to check in premise, has been made non-compulsory,

starting on 1 May 2022 [16]. This raises the doubt of whether MySejahtera is still relevant today, and whether it should be abandoned, and uninstalled from Malaysians' mobile phones.

Although the check-in function, which is the main source of information to make digital contact tracing possible, is not mandatory anymore, it must be noted that the MySejahtera has other functions which are still relevant today.

This paper seeks to find out the ownership of the MySejahtera application and to discuss the relevance of continuing to use MySejahtera in daily life, as it carries other important functions in one single app. This paper looks into the existing legal regulations such as Personal Data Protection Act 2010, Prevention and Control of Infectious Diseases Act 1988, Communication and Multimedia Act 1988 and Medical Act 1971 to find out their relevance in regards to the privacy issue of MySejahtera. The research method adopted in this paper is doctrinal legal research. In the end of this paper, the authors will conclude with suggestions on the amendment to the relevant legislations to safeguard the data privacy of the MySejahtera users.

2 MySejahtera's Functions and Sources of Authority

MySejahtera is an application developed by KPISoft Malaysia Sdn. Bhd. (KPISoft) [17]. It was launched on 20 April 2020 to monitor and control the spreading of COVID-19 infections [9]. The MySejahtera application is developed to [18]:

- *assist the Government in managing and mitigating the COVID-19 outbreak;*
- *help users in monitoring their health throughout the COVID-19 outbreak;*
- *assist users in getting treatment if they are infected with COVID-19;*
- *locate nearest hospitals and clinics for COVID- 19 screening and treatment.*

In this part, the main functions of MySejahtera will be discussed and the sources of authority for implementing MySejahtera will be identified.

2.1 Functions

The functions of MySejahtera can be categorised into four types, namely contact tracing, vaccination, information, and others.

2.1.1 Contact Tracing

Contact tracing is the main function of MySejahtera, it serves the purpose of identifying the potentially infected individuals and follow-up with isolation. This contact tracing is done by using MySejahtera application to scan the QR code provided at the entrance of a premise. This feature was added on 1 June 2020 to the MySejahtera application in order to perform digital contact tracing [19]. Before that, premise visitors were needed to write down their details in a book provided by the premise owners, now it can be done in both ways [19]. There are 6 classifications of MySejahtera users which are used to determine if a user is allowed to enter a premise [18, 20]:

Classification	Description
Low Risk	Low risk individuals are allowed to enter the premises.
Casual Contact	Individuals who were likely exposed to infected individuals are allowed to enter premises if they do not show any symptoms.
Close Contact	Individuals exposed to infected individuals are not allowed to enter the premises.
Person Under Surveillance	Individuals who have a risk to be infected, mainly the individual who travelled abroad recently. They are not allowed to enter the premises.
Suspected Case	Investigation is carried out on these individuals. They are not allowed to enter the premises.
Confirmed Case	Infected individuals. They are not allowed to enter the premises.

It is to be noted that, whether a high-risk individual may enter a premise depends on the policy of each premise. There is no rule set by the government to deny the entry of high-risk visitors [18].

If an individual has been infected with COVID-19, there will be a historical record of the premises that he visited recently. Therefore, it helps the government to trace the casual contact and close contact with individuals, and make arrangements accordingly.

MySejahtera also has a function to add dependents under the account of an individual under “Manage Dependents” [18]. This function eases the burden of having a mobile phone for every family member, as not everyone possesses a mobile phone.

Other than that, if an individual is feeling unwell, and possesses some symptoms of COVID-19, he may do a self-assessment using the MySejahtera application. He may also self-report his status using MySejahtera if he does a swab test and confirms he is a positive individual.

2.1.2 Vaccination

On 23 February 2021, the MySejahtera application added a new function that is to facilitate the arrangement of vaccination for the public [21]. The applicant for vaccination is required to verify their name, identity card number and phone number are correct to proceed with the registration. They must also consent to the vaccination.

After the MySejahtera user has registered in the vaccination programme, the date, time, and venue of vaccination will be assigned to each applicant. After vaccination has been completed, the MySejahtera user will receive a digital certificate to prove that he is a vaccinated person [22].

A person who received vaccination abroad will have to report himself to the district health office by submitting evidence of the vaccination [23]. After the district health office verifies the evidence, the digital certificate will be issued to his MySejahtera.

The digital certificate contains the details of the name of the vaccinated individual, the identity card number, date of birth, and the details of doses of vaccination which consist of the date of vaccination, the type of vaccination dose, the venue of vaccination, and the batch number of the vaccination dose.

Previously when Movement Control Order and its variants were in force, only vaccinated individuals were allowed to travel interstate [24].

Currently, the digital certificate is important in travelling abroad as certain countries allow those vaccinated individuals to visit them. For example, in November 2021, the United States embassy in Kuala Lumpur announced that the digital certificate in MySejahtera will be accepted as proof of vaccination for Malaysians to travel to the United States [25]. Starting 4 April 2022, European Union (EU) also recognises the digital certificate in MySejahtera as the equivalent of EU's Digital Covid Certificate [26].

2.1.3 Information

MySejahtera is providing the daily update of information regarding the COVID-19 pandemic. For example, the statistics of R-Value, the total confirmed cases, daily increase cases, etc. The 'Infectious Diseases Tracker' identifies the hotspot area of COVID-19 infections for the users. MySejahtera also has a help desk function to solve the queries of the users. The locations of vaccination venues, health facilities, and health screening facilities may also be identified using MySejahtera.

Other than that, MySejahtera also republishes the announcement from the Ministry of Health or National Security Council. Links to standard operating procedures during the pandemic issued by the National Security Council can also be found in MySejahtera.

2.1.4 Others

MySejahtera has the functions of conducting digital healthcare, like virtual health advisory, clinic appointment booking, emotional support hotline, psychosocial support information, and self-screening assessment.

2.2 Sources of Authority

According to the MySejahtera official website [18], the purpose of MySejahtera is to support the implementation of the Prevention and Control of Infectious Diseases Act 1988 (PCIDA) [27]. Communication and Multimedia Act 1998 (CMA) [28] is also cited in regards to the offence of providing false information [18].

Section 22 of the PCIDA provides any person who: -

“..."

(c) refuses to furnish any information required for the purposes of this Act or any regulations made under this Act;

(d) upon being required to furnish any information under this Act or any regulations made under this Act, gives false information, commits an offence.”

Section 31 of the PCIDA gives a general power to the minister to make regulations to prevent the spread of diseases.

According to Standard Operating Procedure (SOP), #ReopeningSafely issued on 1 April 2022 [29], the requirement of using MySejahtera is stated in Requirement 2,

which requires the party responsible for the premise need to ensure the employee and visitor scan MySejahtera QR code upon enter into the premise and make sure only 'low risk' individuals are allowed to enter. The employees and visitors are also required to scan the QR code. Standing Order 4 of the SOP states any person who contravenes any provision of the SOP will be liable to a fine or imprisonment, or both, upon conviction, under the PCIDA. Any individuals who furnish false information will also be liable under section 22(d) of the PCIDA. The SOP does not state the exact provision under the PCIDA, that it is an offence if a person does not observe the SOP. It could be section 22(c) of the PCIDA which requires individuals to furnish information.

3 Chaos and Confusion in the Ownership of MySejahtera

On 12 August 2020, the then Deputy Health Minister Dr. Noor Azmi Ghazali stressed that the data collected in MySejahtera is protected under the Personal Data Protection Act 2010 [30, 31]. Dr. Noor Azmi also stressed that the data is confidential under the Medical Act 1971 [32] and the PCIDA, and the regulations will be strictly followed [31]. On 18 August 2020, the concerns of data security of MySejahtera were raised in the Parliament during question time. The minister in charge stated that anyone who causes the leakage of personal information in MySejahtera will face a legal prosecution [33].

The developer of the MySejahtera application is KPISoft [17]. MySejahtera started as a corporate social responsibility by KPISoft for 1 year, and after 1-year the Malaysian government will start to pay for the application [34]. It was also stressed that all the data accumulated in MySejahtera belongs to the Ministry of Health [34]. On 21 September 2021, the current Prime Minister stated the government will start to pay for MySejahtera upon the expiry of 1-year corporate social responsibility [35]. However, the payment has not started as the amount and method of payment are still in the negotiation process [35].

The concerns about the ownership of MySejahtera started in March 2020 after a report was issued by the Public Accounts Committee (PAC) [36]. In the PAC report, it is revealed that there was no contract entered between the government and KPISoft. KPISoft was merely providing the MySejahtera application as a platform for free, or under the name of corporate social responsibility for the first year. After 1 year, the Malaysian government shall make payment for using the service. However, to date, no payment has been made. The only payment made to KPISoft is for the Google Map and Places application programming interface. In 2021, the name of KPISoft Malaysia Sdn. Bhd. Was changed to Entomo Malaysia Sdn. Bhd. (Entomo).

In the report, it is also revealed that the MySejahtera has been sold by KPISoft to MySJ Sdn. Bhd. (MySJ). The KPISoft and MySJ are two different entities and they are not related. The sale between these two entities was without the consent of the government. If this sale is a valid transaction, then the government would have to renegotiate with MySJ and not KPISoft anymore. Another effect of the transaction is the government would have to make a direct negotiation with MySJ and bypass the open tender requirement. Therefore, it raises an issue as to whether this transaction is recognised, as the government authorities stressed that the application is fully owned by the government.

In the report, it is also stated that the way of providing service through corporate social responsibility for 1 year, then payment is needed to be paid for continued usage seems like by-passing the normal procurement which requires open tender. In the report, the PAC was informed that although the MySejahtera is owned by KPISoft, the privacy data of MySejahtera is owned by the Ministry of Health.

After the release of the report from the PAC, the Opposition Leader, Datuk Seri Anwar Ibrahim (DSAI) raised his concerns against the sale of the MySejahtera Application to MySJ [12]. Answering DSAI's concerns, the Minister of Health reiterated the data in MySejahtera is fully owned by the government [13].

According to the report from the PAC, we can find that the MySejahtera application was developed by KPISoft, which later became Entomo. In November 2021, MySejahtera was sold by KPISoft to MySJ. Therefore, it is clear that the government does not own the application, but merely owns the data stored in the application. However, according to the Minister of Health, MySejahtera's intellectual property rights, modules, source code, and personal data stores in the application are fully owned by the government [37]. But the confusion arises again as a court case is ongoing between two shareholders of MySJ. In that case, a supporting affidavit given by Entomo shows that Entomo is the owner of MySejahtera in terms of intellectual property rights, while the government of Malaysia merely owns the trademark of MySejahtera and the data collected in the application [38]. Therefore, the chaos and confusion are continuing to subsist.

According to a press statement issued by the PAC on 23 April 2022 [39], the report on the issues of the MySejahtera application will be presented to the Parliament on 18 July 2022.

4 Is PDPA Sufficient to Protect Public Interest?

The issues of data privacy in MySejahtera were raised repeatedly after it was launched to support the implementation of the PCIDA. The Ministry of Health and the National Security Council reiterated again and again that MySejahtera users need not worry about their personal data being used for purposes other than the purposes of implementing the PCIDA [13, 31, 33, 37]. It is stated that the personal data stored in MySejahtera is protected under the PDPA, the PCIDA, and the Medical Act 1971.

It must be noted that, although the PCIDA and the Medical Act 1971 were cited numerously in answering the data privacy issues, however, both Acts do not have any provision regarding the leakage of personal data. The PCIDA only has section 22(c) that requires the public to furnish information. Any consequence of the leakage of the information which will make the government liable is not mentioned in any part of the PCIDA. On the other hand, the Medical Act 1971 is an Act related to the registration and regulation of medical practitioners, there is also no provision mentioned about the protection of data privacy.

The PDPA is an Act to regulate the processing of personal data for commercial use. Therefore, whether it is applicable to personal data stored in MySejahtera is an issue to be solved, as the government stated all of the personal data collected through MySejahtera belongs to the government [13]. It was stated that even though the PDPA

is not applicable to the government, nonetheless, the protection of the data will follow the provisions under the PDPA [31].

Section 3(1) of the PDPA provides that ‘this Act shall not apply to the Federal Government and State Governments.’

According to the current Minister of Health, the Ministry of Health is discussing with the Communications and Multimedia Ministry to propose a potential amendment to PDPA to create a regulatory framework for the MySejahtera application [40]. Although there was a public consultation paper regarding the review of the PDPA [41], to date, there is no bill regarding the amendment presented to the Parliament.

It is stated on MySejahtera’s official website that personal data will only be stored for 90 days, and this data will be purged after that [18]. The user data will be archived for 30 days, and later will be deleted in an automatic process after 90 days [42]. This is in line with the retention principle under section 10 of the PDPA, which requires the data users to delete the personal data, after the purpose of the personal data has been fulfilled. However, since the PDPA is not applicable to the government, no action could be made even if the personal data is kept for longer than 90 days.

The assurance given by the Minister of Health or other government officers in a press statement carries no merits in law as it is not a proper way to implement a law or policy. The proper way of implementing the law to protect MySejahtera users’ data is through passing a bill through the legislative body, Parliament, under the legislative power of Parliament provided by Article 66 of the Federal Constitution [43]. The promise and assurance do not have any binding effect on the government, this can be observed in the case of *Sidek bin Haji Muhammad & Ors v Government of Perak* [44]. In *Sidek’s* case, the squatters relied on the promise of the State Director of Lands, and the same promise was also reported in *Utusan Melayu* and also *Bernama*, which is a government agency. Raja Azlan Shah CJ stated the State Director had no authority to bind the Government to his promise. It is because the proper way to obtain State Land is provided in the National Land Code. Raja Azlan Shah CJ cited a principle that is “*where an Act creates an obligation, and empowers the obligation in a specified manner, we take it as a general rule that performance cannot be enforced in any other manner*”. Similarly, since the PDPA has provided that the Act is not applicable to the government, the assurance of the government officers in a press statement does not bind the government if it happens that the MySejahtera users’ data has been misused. The PDPA will only take effect to bind the government unless and until the PDPA is amended through Article 66 of the Federal Constitution to be applicable to the government.

Therefore, the PDPA is not sufficient to protect the public interest regarding the data privacy issues in the MySejahtera until a new amendment to the act has been made.

5 Is MySejahtera Still Relevant After 1 May 2022?

Before the requirement of checking in before entering a premise was made non-mandatory, there was a sharp drop in the number of users using the MySejahtera check-in feature [15]. On 1 May 2022, after the mandatory check-in requirement officially ceased to be in effect, the usage of the MySejahtera check-in feature dropped 73.8 percent [45]. Therefore, is MySejahtera still relevant today?

Although MySejahtera is having a sharp drop, recently it introduced a new feature that tracks infectious diseases happening in the vicinity of the user [46]. It shows the Ministry of Health is still spending the resources on MySejahtera. There is also a suggestion by the Malaysian Medical Association to use MySejahtera as storage of medical treatment records for the user [47].

Other than that, MySejahtera has other functions which are still relevant today. For example, the digital vaccination certificate in the application, the information published by the Ministry of Health or National Security Council, the COVID-19 hotspot feature, and the health care facility information.

The habits of scanning QR codes using MySejahtera are still subsisting now, even though the mandatory requirement has ceased to be in effect [48]. Not to mention, even though the check-in requirement is not mandatory, the premise owner is still required to make sure the visitor is not under a surveillance order [16, 47, 48]. Therefore, after 1 May 2022, some of the premise owners are still providing a QR code to be scanned, although there are some of the premise owners who are not providing the QR code anymore.

It is to say that the MySejahtera application is still relevant even after 1 May 2022, the mandatory requirement to check in has been lifted.

6 Recommendations and Conclusion

Since MySejahtera is still relevant after 1 May 2022, its data privacy issues should be solved to protect the interest of the public. The current issue is although the government keeps on promising and assuring that all the user data are under protection, there is no proper law to protect the user data stored in MySejahtera.

In this paper, it is known that the government authorities have assured the security of the MySejahtera application and its collected data are owned by the government. However, at present, no proper written contract has been made between the government and KPISoft (or Entomo) or MySJ, the new owner and no payment has been made for the purchase of the application. It is hoped that with the conclusion of the contract with the correct party, both the MySejahtera application and the collected data in the application will belong to the government.

Although the PDPA was suggested to be amended to meet the needs of data protection in MySejahtera, currently no action is taken on the proposed amendment bill in Parliament. Therefore, the government should stop giving promising speeches, instead take necessary action to address this issue urgently.

Nevertheless, the proposed amendment to the PDPA may encounter some challenges such as extending its scope of jurisdiction to include government. It is suggested that an alternative way to protect the data privacy in MySejahtera is to amend the PCIDA or Medical Act 1971 by inserting new provisions regarding confidential information in the MySejahtera. By adding new provisions regarding the misuse of confidential medical information and making it an offence, anyone who misuses the data collected would be punished. Therefore, it may prevent the commercialisation of the confidential information due to its potential liabilities.

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