

# State Obligation in Fulfilling the Right to Health through the Mandatory COVID-19 Vaccination

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**ABSTRACT:** The spread of the COVID-19 has become a major international health crisis. Most governments worldwide have had to impose severe restrictions on their citizens' freedoms due to the outbreak to contain the disease. After the vaccine for COVID-19 became available, many countries, including Indonesia, implemented mandatory COVID-19 vaccination. This policy is very controversial to be debated, especially regarding human rights violations (the right to freedom of choice). Therefore, this normative juridical study investigates the state's responsibility in fulfilling citizens' health rights through mandatory COVID-19 vaccination in the human rights aspect. According to the study's findings, for the sake of achieving public health safety and security as well as the fulfilment of public health rights, on that basis, the state is allowed to enforce the mandatory COVID-19 vaccination. Nevertheless, the state should continue to apply it humanely that does not violate human rights by ensuring freedom from torture, cruelty, inhumanity, or any other medically degrading dignity, including freedom from medical experiments and research and forced sterilization do not have informed consent. On the other hand, the state is also responsible for providing health goods and facilities without discriminating against race. Non-discrimination is an essential thing in order to realize the high degree of health to be achieved.

**KEYWORDS:** COVID-19, Human Rights, Right to Health.



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## I. INTRODUCTION

The COVID-19 virus pandemic has become a worldwide public health concern.<sup>1</sup> Because of its ease of spread, this virus has caused a large-scale disease outbreak. This virus's negative impact has spread to all fields, including health, economy, society, and politics.<sup>2</sup> This virus has detrimental impacted people's lives worldwide and it has significantly altered their social behavior.<sup>3</sup> Thus, On March 11, 2020, the World Health Organization (WHO) declared COVID-19 a global pandemic.<sup>4</sup> In this context, numerous research projects, clinical trials, and economic, cultural, political, and legal policies have been carried out since then.

Because of this pandemic, most of the world's governments have been compelled to place significant limits on their citizens' freedom to halt the further spread of the virus.<sup>5</sup> It poses a special moral problem because it affects people everywhere and in aspects of their lives. Travel restrictions have been instituted to stem the spread of the illness, and entire economies have been shut down.<sup>6</sup> Even though significant physical segregation and public health measures have slowed the spread of the virus, further maximizing in terms of reducing the likelihood of health system failure by

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<sup>1</sup> Muhammad Adnan Shereen et al, "COVID-19 infection: Emergence, transmission, and characteristics of human coronaviruses" (2020) 24 J Adv Res 91–98.

<sup>2</sup> Charlene M C Rodrigues & Stanley A Plotkin, "Impact of Vaccines; Health, Economic and Social Perspectives" (2020) 11 Front Microbiol 1526.

<sup>3</sup> Mohammad Syahrul RA, Yusuf Hamdika & Sholahuddin Al-Fatih, "The Impact of COVID-19 Through the Lens of Islamic Law: An Indonesian Case" (2020) 7:3 Lentera Huk 267–278 at 267.

<sup>4</sup> Simona Toscano, Clara G Chisari & Francesco Patti, "Multiple Sclerosis, COVID-19 and Vaccines: Making the Point" (2021) 10:2 Neurol Ther 627–649.

<sup>5</sup> Marc Debus & Jale Tosun, "Political ideology and vaccination willingness: implications for policy design" (2021) 54:3 Policy Sci 477–491.

<sup>6</sup> Erwin J Khoo & John D Lantos, "Lessons learned from the COVID-19 pandemic" (2020) 109:7 Acta Paediatr Int J Paediatr 1323–1325; Sholahuddin Al-Fatih, Fachry Ahsany & Ahmad Faiz Alamsyah, "Legal Protection Of Labor Rights During The Coronavirus Disease 2019 (Covid-19) Pandemic" (2020) 7:2 J Pembaharuan Huk 100–115 at 102.

increasing the chances of finding therapies and vaccines is also very important.<sup>7</sup>

Indeed, there have been scenarios in producing and disseminating a vaccine that is both efficient and risk-free constitute the most advantageous situation for the control of an epidemic since it offers long-term protection against an outbreak of COVID-19.<sup>8</sup> The development of vaccinations represents the only realistic chance of controlling this pandemic.<sup>9</sup> Consequently, many researchers have focused on creating an effective vaccine against COVID-19 to forestall a pandemic. The S protein of SARS-CoV-2 has been used to create most of these vaccine candidates.<sup>10</sup> In the months following the official declaration of the pandemic, additional vaccinations were developed and released that offered high levels of protection against the COVID-19 virus.<sup>11</sup>

It may be good news because vaccination has a significant impact on global public health; aside from clean water, no other modality has a significant impact on reducing mortality and population growth.<sup>12</sup> However, vaccination programs can only be considered successful if a sizable enough proportion of the population receives the vaccine.<sup>13</sup> Although vaccines are effective against this disease, the bad news is that some people are still hesitant to get vaccinated out of fear of the potential short-term, such as

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<sup>7</sup> Serge Nyawa, · Dieudonné Tchuenté & Samuel Fosso-Wamba, “COVID-19 vaccine hesitancy: a social media analysis using deep learning” (2022) *Ann Oper Res* 2022 1–39.

<sup>8</sup> Daniela Calina et al, “COVID-19 vaccines: ethical framework concerning human challenge studies” (2020) 28:2 *DARU, J Pharm Sci* 807–812.

<sup>9</sup> Shivaji Kashte et al, “COVID-19 vaccines: rapid development, implications, challenges and future prospects” (2021) 34:3 *Hum Cell* 711–733.

<sup>10</sup> Simran Preet Kaur & Vandana Gupta, “COVID-19 Vaccine: A comprehensive status report” (2020) 288 *Virus Res* 198114.

<sup>11</sup> Jacques Bughin et al, “Vaccination or NPI? A conjoint analysis of German citizens’ preferences in the context of the COVID-19 pandemic” (2022) 1 *Eur J Heal Econ* 1–14.

<sup>12</sup> Rodrigues & Plotkin, *supra* note 2.

<sup>13</sup> Linda Thunström et al, “Hesitancy Toward a COVID-19 Vaccine” (2021) 18:1 *Ecohealth* 44–60.

physical health-related quality of life and stress,<sup>14</sup> and long-term, such as fatigue, headache, attention disorder, hair loss, and dyspnea,<sup>15</sup> bad effects or reactions, such as death after vaccination. The use of mandatory vaccination can achieve herd immunity,<sup>16</sup> but this practice is controversial because it violates individuals' autonomy and fundamental rights.<sup>17</sup> In addition, the research demonstrates that vaccination cannot ensure the avoidance of illness or re-infection. Consequently, public animosity towards this coercive approach endures, even as post-inoculation worry persists.<sup>18</sup>

Eventually, From the outset of the discussion on mandatory vaccinations, individuals have looked to the fields of law for reliable information, and democratic governments have been called on to fulfill their statutory responsibility as custodians of the public trust.<sup>19</sup> Therefore, the purpose of this article was to examine the following research questions: (1) why does the state mandate a mandatory COVID-19 vaccination policy for every citizen; and (2) what is the state's responsibility in fulfilling citizens' health rights through mandatory COVID-19 vaccination policies. Considering that the human rights of citizens during the Covid-19 pandemic are very important to pay attention to, especially by the state,<sup>20</sup> so the theoretical approach used in this article is naturally human rights

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<sup>14</sup> Leonard E Egede et al, "Short-term impact of COVID-19 on quality of life, perceived stress, and serious psychological distress in an adult population in the midwest United States" (2022) 31:8 Qual Life Res 2387–2396 at 2387.

<sup>15</sup> Sandra Lopez-Leon et al, "More than 50 long-term effects of COVID-19: a systematic review and meta-analysis" (2021) 11:1 Sci Rep 1–12 at 1.

<sup>16</sup> C Franzetti & V Bolcato, "Mandatory anti-SARS-CoV-2 vaccination: Seeking a balance between individual and collective rights. The Italian experience" (2022) 22 Ethics, Med Public Heal 100797 at 1.

<sup>17</sup> Zaid Zaid, Wempy Setyabudi Hernowo & Nanik Prasetyoningsih, "Mandatory COVID-19 vaccination in human rights and utilitarianism perspectives" (2022) 11:3 Int J Public Heal Sci 967 at 969.

<sup>18</sup> Fung Kei Cheng, "Debate on Mandatory COVID-19 Vaccination" (2022) Ethics, Med Public Heal 100761.

<sup>19</sup> Franzetti & Bolcato, *supra* note 16.

<sup>20</sup> Sholahuddin Al-Fatih & Felinda Istighfararisna Aulia, "Tanggung Jawab Negara dalam Kasus COVID-19 sebagai Perwujudan Perlindungan HAM" (2021) 12:3 J HAM 349–366 at 349.

## II. METHODS

The COVID-19 mandatory vaccination policy was reviewed using normative juridical research methods which previous similar studies also used the same type of research.<sup>21</sup> Not only are laws and regulations involved in legal research, but so are legal theory and philosophy (jurisprudence). This research is considered normative because it seeks to discover the truth about the problem's coherence and legitimacy, specifically whether the rules, regulations, or laws are consistent with norms, theories, and legal philosophy. This study's analysis is based on secondary data in the form of applicable laws and regulations relevant to the legal issues.

## III. COVID-19 VACCINATION OVERVIEW

According to Christopher J. White et al., vaccination, in addition to maintaining social isolation and wearing protective gear, is known to be the most effective method for preventing the spread of the COVID-19 virus.<sup>22</sup>

Since the COVID-19 pandemic has resulted in severe death and morbidity, everyone must have easy access to medical care<sup>23</sup>. The rate of spread of the virus classified as SARS was previously not determined by the rate of spread until finally, a month after it was discovered that COVID-19 was a highly contagious virus<sup>24</sup>. Because of the crisis's serious nature, public health officials and pharmaceutical corporations have been working around the clock to produce vaccinations against COVID-19.<sup>25</sup>

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<sup>21</sup> Zaid, Hernowo & Prasetyoningsih, *supra* note 17; Yudi Setiawan et al, "A Libertarian Legitimacy for Mandatory Covid-19 Vaccination" (2022) 29:2 J Media Huk 94–106.

<sup>22</sup> Christopher J White, Habib Samady & David J Moliterno, "The Case for Mandatory COVID-19 Vaccination of Health Care Workers" (2021) 14:17 Jacc Cardiovasc Interv 1961–1962.

<sup>23</sup> Zaid, Hernowo & Prasetyoningsih, *supra* note 17.

<sup>24</sup> Setiyo Adi Nugroho & Indra Nur Hidayat, "Efektivitas Dan Keamanan Vaksin Covid-19 : Studi Refrensi" (2021) 9:2 J Keperawatan Prof 61–107.

<sup>25</sup> Álvaro Briz-Redón & Ángel Serrano-Aroca, "On the association between COVID-19 vaccination levels and incidence and lethality rates at a regional scale in Spain" (2022) Stoch Environ Res Risk Assess 1–8.

Vaccines are considered very important because they are a key component in control and the fight against virus infection.<sup>26</sup> Furthermore, the COVID-19 vaccine is one of the instruments needed to manage health crises brought on by the COVID-19 pandemic by raising community immunity to a point where widespread immunity can be produced for the entire community.<sup>27</sup> Thus, getting vaccinated is one of the most important things governments and communities can do.<sup>28</sup> Furthermore, the first step that may be taken to protect human rights in the face of emergency preparedness for public health is to accept it, even admit it.<sup>29</sup>

Vaccination, one of the most critical advancements in public health made throughout the 20th century,<sup>30</sup> aims not only to break the chain of disease transmission and stop the outbreak but also to eliminate and even irradiate (destroy eliminate) the disease itself in the long run.<sup>31</sup> Vaccination is essentially a community right, not an obligation, because a right is a legal authority or power.<sup>32</sup> A legally protected interest. Private as well as public. A right can be defined as something appropriate or worthy of acceptance. On the other hand, an obligation is a contractual burden or responsibility. In other words, a right is something that should be granted.<sup>33</sup>

Furthermore, in line with Pancasila and the Preamble to the Republic of Indonesia's 1945 Constitution, public health is recognized as a

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<sup>26</sup> Anna Y Popova et al, "SARS-CoV-2 herd immunity of the Kyrgyz population in 2021" (2022) 211:4 *Med Microbiol Immunol* 2022 2114 195–210.

<sup>27</sup> Noni E MacDonald et al, "A public health timeline to prepare for COVID-19 vaccines in Canada" (2020) 111:6 *Can J Public Heal* 945–952.

<sup>28</sup> Ramey Moore et al, "Motivations to Vaccinate Among Hesitant Adopters of the COVID-19 Vaccine" (2022) 47:2 *J Community Health* 237–245.

<sup>29</sup> Zaid, Hernowo & Prasetyoningsih, *supra* note 17.

<sup>30</sup> Annie-Laurie McRee et al, "Has the COVID-19 pandemic affected general vaccination hesitancy? Findings from a national study" (2022) *J Behav Med* 2022 1–6.

<sup>31</sup> Fitriani Pramita Gurning et al, "Kebijakan Pelaksanaan Vaksinasi Covid-19 Di Kota Medan Tahun 2020" (2021) 10:1 *J Kesehat* 43–50.

<sup>32</sup> Cornelia Betsch & Robert Böhm, "Detrimental effects of introducing partial compulsory vaccination: experimental evidence" (2016) 26:3 *Eur J Public Health* 378–381 at 378.

<sup>33</sup> Silvio Roberto Vinceti, "COVID-19 Compulsory Vaccination and the European Court of Human Rights" (2021) 92:Suppl 6 *Acta Bio Medica Atenei Parm* 2021472.

fundamental human right (Article 25 of the Universal Declaration of Human Rights). This means that in addition to state actors, non-state actors must be compelled by the right to health to provide disease prevention measures for the benefit of citizens.<sup>34</sup> This is due to Article 28 section (1) of the 1945 Constitution, which establishes the government's primary responsibility to protect the population's health.

Furthermore, the International Covenant on Economic, Social, and Cultural Rights (ICESCR), ratified in Law Number 11 of 2005 concerning Ratification of the International Covenant on Economic, Social and Cultural Rights, emphasizes that "every state is required to recognize everyone's right to the highest standard of physical and mental health." In this setting, the word "recognize" also refers to the safeguards that require the state to not only refrain from the intentional and unlawful deprivation of individual life but also to take reasonable steps to protect the lives of individuals subject to its authority. These safeguards are intended to ensure that the state does not deprive individuals of their lives intentionally or unlawfully.<sup>35</sup> The Indonesian government has recently approved some policies, including mandatory vaccination.<sup>36</sup> Nevertheless, mandatory vaccination has been argued for in several contemporary works in response

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<sup>34</sup> M C Van Hout & J SG Wells, "The right to health, public health and COVID-19: a discourse on the importance of the enforcement of humanitarian and human rights law in conflict settings for the future management of zoonotic pandemic diseases" (2021) 192 *Public Health* 3–7.

<sup>35</sup> Francesca Camilleri, "Compulsory vaccinations for children: Balancing the competing human rights at stake" (2019) 37:3 *Netherlands Q Hum Rights* 245–267.

<sup>36</sup> Muhammad AUFAR SAPUTRA PRATAMA ERWAN et al, "Predicting Covid-19 Vaccination Intention: The Role of Health Belief Model of Muslim Societies in Yogyakarta" (2021) 13:1 *Al-Sihah Public Heal Sci J* 36–50 at 37; Setiawan et al, *supra* note 21; Zaid, Hernowo & Prasetyoningsih, *supra* note 17; Katon Pratondo & Zaid Zaid, "Customer Loyalty During Pandemic: Understanding Loyalty Through the Lens of Online Ride Hailing Service Quality" (2021) 5:1 *Int J Soc Sci Bus* 69–75 at 69; Zaid & Katon Pratondo, "Public perception on covid-19 vaccination intention" (2021) 10:4 *Int J Public Heal Sci* 906–913 at 906–907.

to the urgent societal necessity to defend individual and public health.<sup>37</sup> The following paragraphs will go into further detail.

#### IV. COVID-19 VACCINATION MANDATORY POLICY

One of the essential ways to rein in the COVID-19 pandemic and get life back to normal is through immunization. Despite the overwhelming scientific evidence supporting vaccination, anti-vaccine rhetoric persists on the internet.<sup>38</sup> Reduced vaccination rates against COVID-19 can be mainly attributed to vaccine skepticism and difficulties gaining entry to necessary health and immunization services.<sup>39</sup>

Regarding the pandemic, People's reluctance to vaccinate is among the top 10 threats to global health.<sup>40</sup> As a result, vaccine resistance is the most significant impediment to attempts to control the COVID-19 virus.<sup>41</sup> The state can use the mandatory vaccination policy to solve this problem and get broader and wider community vaccination coverage.<sup>42</sup>

As already mentioned, this mandatory vaccination regulation has sparked heated debate and arguments. The legal and bioethical sectors have long debated the appropriateness of mandating particular medical procedures.

<sup>43</sup>The right to self-determination and the obligation to preserve and

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<sup>37</sup> Francesco Paolo Bianchi et al, "COVID-19 vaccination hesitancy in Italian healthcare workers: a systematic review and meta-analysis" (2022) *Expert Rev Vaccines* 1–12.

<sup>38</sup> Dominik Wawrzuta et al, "Attitudes toward COVID-19 Vaccination on Social Media: A Cross-Platform Analysis" (2022) 10:8 *Vaccines* 1190 at 1190.

<sup>39</sup> Eve Dubé et al, "'I don't think there's a point for me to discuss it with my patients': exploring health care providers' views and behaviours regarding COVID-19 vaccination." (2022) *Hum Vaccin Immunother* 2088970.

<sup>40</sup> Candy Ochieng et al, "Factors Associated with COVID-19 Vaccine Hesitancy among Visible Minority Groups from a Global Context: A Scoping Review" (2021) 9:12 *Vaccines* at 1445.

<sup>41</sup> Anakpo Godfred, Syden Mishi & Godfred Anakpo, "Hesitancy of COVID-19 vaccines: Rapid systematic review of the measurement, predictors, and preventive strategies" (2022) *Hum Vaccin Immunother*.

<sup>42</sup> Amandine Gagneux-Brunon et al, "Public opinion on a mandatory COVID-19 vaccination policy in France: a cross-sectional survey" (2022) 28:3 *Clin Microbiol Infect* 439, online: </pmc/articles/PMC8912915/>.

<sup>43</sup> Zaid, Hernowo & Prasetyoningsih, *supra* note 17 at 967.



maintain collective safety, guaranteed by international treaties and constitutional obligations, are at risk of jeopardizing that conflict. Amid the global health catastrophe caused by the COVID-19 pandemic, the legitimacy of implementing compulsory vaccination has emerged as a central issue in the multifaceted debate around pandemic health policies.<sup>44</sup>

In Indonesia, there is still some disagreement regarding whether or not the COVID-19 vaccine is effective, with some individuals choosing to vaccinate their selves while others remain skeptical.<sup>45</sup> Some people think it should be mandated, while others view it as more flexible.<sup>46</sup> The debate did not end there. The perspective of human rights began to be considered. It has been argued that requiring everyone to vaccinate against COVID-19 violates human rights because it interferes with people's ability to make informed decisions about their health and bodies, which is actually protected in Article 5 section (3) of Law No. 36 of 2009 on Health. Moreover, Article 56 (1) of Law No. 36 of 2009 on Health states, "Every person has the right to accept or reject part or all of the relief measures that will be given to him after receiving and understanding the complete information regarding the action." Diseases that can quickly spread throughout a population are an exception, as explained in section (2) letter a. Consequently, human rights criteria that reflect individual values must be considered while implementing public health policies<sup>47</sup>.

When it comes to protecting the public interest, human rights theory shows that individual rights must take a back seat to collective ones. In order to achieve public health on a large scale, it is necessary to implement measures that restrict choices.<sup>48</sup> In 2007, In a similar vein, the World

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<sup>44</sup> Filippo Gibelli et al, "COVID-19 Compulsory Vaccination: Legal and Bioethical Controversies" (2022) 9 *Front Med* 821522.

<sup>45</sup> Zaid Zaid & Mahbub Pasca Al Bahy, "Examining Factors Influencing Halal Covid-19 Vaccination Intention Among The Muslim Communities" (2022) 8:1 *Psikis J Psikol Islam* 40–53 at 41.

<sup>46</sup> Dominikus David Biondi Situmorang, "COVID-19 vaccination: is it mandatory or optional?" (2022) *J Public Health (Bangkok)*.

<sup>47</sup> Brigit Toebes, "Mediating Tensions Between Public Health and Individual Rights" (2020) 30:5 *Eur J Public Health* 2020.

<sup>48</sup> Ronald Bayer, "The continuing tensions between individual rights and public health" (2007) 8:12 *EMBO Rep* 1099–1103.

Health Organization (WHO) stated that in the event of a pandemic emergency, it might be necessary to restrict people's ability to exercise their human rights and civil freedoms in the name of protecting the public.<sup>49</sup> The European Court of Human Rights (ECHR) has also ruled that mandatory vaccination does not run afoul of human rights law and may even be necessary for democratic countries.<sup>50</sup> We agree wholeheartedly with Parmet that the legislature, under the motto "*Salus populi suprema lex esto*," can use its authority and delegate authority to public officials to protect public health, even if this requires the sacrifice of individual rights<sup>51</sup>. Moreover, Article 8(2) of the European Convention of Human Rights that "There shall be no interference by a public authority with the exercise of this right except such as is under the law and is necessary. In a democratic society in the interests of national security or public safety."<sup>52</sup>

From a human rights standpoint, mandatory COVID-19 vaccination can be acceptable (in a proportional way).<sup>53</sup> As long as it is proportionate, rational, equitable, nondiscriminatory, and in full compliance with national and international laws, it can protect public health rights against the threat of COVID-19.<sup>54</sup> Furthermore, compulsory COVID-19 vaccination without violence is required to ensure vaccination and safe social life.

This mandatory vaccination program is a policy implemented by the Indonesian government to overcome the spread of Covid-19. Because the government is responsible for the protection and welfare of its citizens, the actions taken must be based on laws and regulations.<sup>55</sup> Administrative sanctions in Presidential Regulation No. 14 of 2021 concerning

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<sup>49</sup> Marcin Orzechowski, Maximilian Schochow & Florian Steger, "Balancing public health and civil liberties in times of pandemic" (2021) 42:1 J Public Health Policy 145–153.

<sup>50</sup> Vinceti, *supra* note 33.

<sup>51</sup> Zaid, Hernowo & Prasetyoningsih, *supra* note 17.

<sup>52</sup> Muhammad Ali Nasir, "Negative governmentality through fundamental rights: The far side of the European Convention on Human Rights" (2018) 24:4–5 Eur Law J 297–320.

<sup>53</sup> Zaid, Hernowo & Prasetyoningsih, *supra* note 17.

<sup>54</sup> Orzechowski, Schochow & Steger, *supra* note 49.

<sup>55</sup> Riska Agustina et al, "Kebijakan Wajib Vaksinasi Covid-19 Ditinjau dari Asas Manfaat, Kepentingan Umum dan Hak Asasi Manusia" (2021) 1:3 Indones Law Reform J 384–398.

Amendments to Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the Context of Combating the Corona Virus Disease 219 (Covid-19), increase the threat of vaccine refusal sanctions, which reduces people's welfare. This violates human rights and does not reflect the goal of the Indonesian state, which is to promote the general welfare. Public services should not be cut or discontinued for any reason or under any circumstances because it is the state's responsibility to its citizens. In this way, public services must continue to operate even if the nature of the service changes.

It is stated that everyone who has been designated as a target recipient of the COVID-19 vaccine and who does not participate in the COVID-19 vaccination may be subject to administrative sanctions in the form of delay or termination in the provision of social security or social assistance, government administrative services, or penalty.<sup>56</sup> Therefore, vaccine mandates gain legitimacy by decreasing the likelihood of an individual spreading an infection to others. To boost immunization rates generally in communities, mandates may be implemented to justify the use of coercion to boost vaccination coverage. As with mandates, a more robust ethical case must be made. Careful consideration of epidemiological, programmatic, legal, and human rights concerns is required of policymakers as they strike a balance between protecting individual rights and advancing public welfare.<sup>57</sup> In the case that is not thoroughly considered, the vaccine requirement will result in plenty of significant violations of law and human rights.<sup>58</sup> Therefore, an important thing to note is, as stated by Julie Leask et al., "the benefits gained by vaccination mandates must be greater than the harms they may cause"<sup>59</sup>

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<sup>56</sup> *Ibid.*

<sup>57</sup> Julie Leask et al, "Policy considerations for mandatory COVID-19 vaccination from the Collaboration on Social Science and Immunisation" (2021) 215:11 *Med J Aust* 499–503.

<sup>58</sup> Martin Hensher & Sithara Wannu Arachchige Dona, "COVID-19 vaccines, boosters and mandates: building a mission economy, not a rentier paradise" (2022) 216:11 *Med J Aust* 556–558.

<sup>59</sup> Leask et al, *supra* note 57.

## V. STATE OBLIGATION IN THE RIGHT TO HEALTH THROUGH THE MANDATORY COVID-19 VACCINATION

Currently, many countries have implemented mandatory COVID-19 vaccination policies. Italy, France, and Germany are among the countries in Europe Union (EU) implementing mandatory vaccination policies.<sup>60</sup> Greece and Austria have both chosen similar strategies at the beginning of 2022.<sup>61</sup> Countries worldwide have also made vaccination against COVID-19 compulsory for their residents, including "Indonesia, Tajikistan, Turkmenistan, and the Federated States of Micronesia."<sup>62</sup>

Indeed, the launch of vaccines against COVID-19 has encouraged governments to implement coercive action such as mandates.<sup>63</sup> The application of this policy is inseparable for two reasons. The first is related to the purpose of uptaking broader absorption of vaccination, while the second is a form of state responsibility in fulfilling the right to access public health. The primary argument for this practice is strategic. It has to do with ensuring that there is something more important to ensure and protect sufficient immunity within the population to prevent similar waves of illness in the future.<sup>64</sup>

For the first purpose, notwithstanding mandating immunizations raises significant ethical concerns, widespread acceptance of COVID-19 vaccines is essential for developing herd immunity and ending the global pandemic and epidemic.<sup>65</sup> In this setting, there is an effort to boost global vaccination rates to achieve "herd immunity," which could eventually lead to mandatory

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<sup>60</sup> Olivia M Vaz et al, "Mandatory vaccination in Europe" (2020) 145:2 *Pediatrics* e20190620.

<sup>61</sup> Lynette Mtimkulu-Eyde et al, "Mandatory COVID-19 Vaccination: Lessons from Tuberculosis and HIV" (2022) 24:1 *Health Hum Rights* 91 at 86.

<sup>62</sup> Gibelli et al, *supra* note 44.

<sup>63</sup> Katie Attwell et al, "COVID-19 vaccine Mandates: An Australian attitudinal study" (2021) *Vaccine*.

<sup>64</sup> Christiane Druml & Herwig Czech, "A pandemic is no private matter: the COVID-19 vaccine mandate in Austria" (2022) 10:4 *Lancet Respir Med* 322.

<sup>65</sup> Tomasz Zaprutko et al, "Social Attitude to COVID-19 and Influenza Vaccinations after the Influenza Vaccination Season and between the Second and Third COVID-19 Wave in Poland, Lithuania, and Ukraine" (2022) 19:4 *Int J Environ Res Public Health* 2042.

vaccination.<sup>66</sup> Moreover, because it is difficult to reach the last groups that have not been vaccinated against coronavirus disease 2019, consideration is being given to the possibility of using mandatory (COVID-19) vaccination.<sup>67</sup> The opposite argument comes from Konstantinos Giannakou et al., who states that although mandatory measures have the potential to lower the danger of transmission and increase vaccination rates, they are unable to address the problem of vaccine reluctance.<sup>68</sup>

However, Louise C. Savic et al. state that it is the fact that mandatory vaccination might make some people more compliant. It is only that when it comes to applying sanctions, some things need to be considered later on. When it comes to a situation where the prospect of sanctions is too extreme without any discussion to the public, it can actually push other parties to take a more severe posture.<sup>69</sup>

The second reason is that from the very beginning of the discussion regarding mandatory vaccinations, it has been pointed out that democratic governments have responsibilities, and it has been requested that law fields provide citizens with truthful and authoritative answers.<sup>70</sup> However, the state is fundamentally in a situation that presents it with a dilemma. On the one hand, the state is obligated to respect the individual's right to freedom, which manifests as the ability to refuse or accept medical care. On the other side, the state must also constitutionally fulfill the public health right of vaccinating its citizens to protect them from potentially lethal diseases.

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<sup>66</sup> Colum P Dunne & Eimear Spain, "Compulsory vaccination against COVID-19: a legal and ethical perspective on public good versus personal reticence" (2022) *Irish J Med Sci* (1971 -) 2022 1–6, online: <<https://link.springer.com/article/10.1007/s11845-022-02942-x>>.

<sup>67</sup> Amandine Gagneux-Brunon et al, "Public opinion on a mandatory COVID-19 vaccination policy in France: a cross-sectional survey" (2022) 28:3 *Clin Microbiol Infect* 433–439.

<sup>68</sup> Konstantinos Giannakou et al, "Mandatory COVID-19 Vaccination for Healthcare Professionals and Its Association With General Vaccination Knowledge: A Nationwide Cross-Sectional Survey in Cyprus" (2022) 10 *Front Public Heal* 897526.

<sup>69</sup> Louise C Savic, Sinisa Savic & Rupert M Pearse, "Mandatory vaccination of National Health Service staff against COVID-19: more harm than good?" (2022) 128:4 *Br J Anaesth* 608–609.

<sup>70</sup> Franzetti & Bolcato, *supra* note 16.

This requirement falls under the state's responsibility to fulfill public health rights.

Some narratives show that a violation of an individual's right to refuse undesirable treatment is at the root of the resistance to a policy that makes vaccinations mandatory. Instead of instituting either a direct or indirect need for vaccination, it could be morally acceptable to offer financial incentives to encourage people to get the COVID-19 vaccine.<sup>71</sup>

In this context, both state and citizens of societies all over the world need to decide whether or not freedom of choice and conscience should prevail or whether it is acceptable to demand citizens accept a vaccine against a virus that has killed over five million people, resulting in the closure of economies all over the world, and has necessitated restrictions on public freedoms that have never been seen before.<sup>72</sup>

With this issue, Alberto Giubilini and Julian Savulescu have raised a criticism that is worth considering. In their argument, they compare implementing a mandatory COVID-19 vaccination policy to using seat belts, which is an interesting point of view. In either scenario, some factors violate an individual's right to personal freedom. Nevertheless, one is generally condemned while the other is strongly supported, although both share the same objectives and guiding principles. A person going about driving can safeguard themselves from suffering life-threatening injuries or even death by always fastening their seat belts. A person who has received the COVID-19 vaccine is protected from the severe sickness or death that might result from exposure to the coronavirus during their normal everyday activities. Neither one is a risk-free option with a 100% success rate. The genuine danger associated with wearing a seat belt is the same as for a vaccine. While both may be considered minor inconveniences, they have significant benefits in protecting oneself. The actual level of risk connected with wearing a seat belt is the same as for a vaccine. In certain situations,

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<sup>71</sup> Haruka Nakada et al, "Public Attitudes toward COVID-19 Vaccinations before Dawn in Japan: Ethics and Future Perspectives" (2022) 14:3 *Asian Bioeth Rev* 287–302; Julian Savulescu, "Good reasons to vaccinate: mandatory or payment for risk?" (2021) 47:2 *J Med Ethics* 85.

<sup>72</sup> Dunne & Spain, *supra* note 66.

using a seat belt can be counterproductive and lead to injuries that would not have taken place if the person had not been using their seat belt. This phenomenon is referred to as "seat belt syndrome." A person who receives a vaccine does run the risk of experiencing side effects, and there is no assurance that they will ever be exposed to COVID-19.

Nevertheless, one can estimate the probability of exposure roughly equivalent to that of a passenger involved in a car accident just once in their lifetime.<sup>73</sup> Therefore, from "human rights and utilitarianism" perspectives, mandatory COVID-19 immunization is justified in such emergency conditions.<sup>74</sup> This safeguards the greater public interest and provides most Indonesians benefits (such as herd immunity).<sup>75</sup>

Afterward, A Aron's line of thought holds that implementing this mandatory COVID-19 vaccine falls within the purview of the government's responsibility to protect the public's health.<sup>76</sup> The rationale for this is that it is the state's responsibility to ensure that its inhabitants have access to critical public services and medical care of a high standard, including medical treatment. However, the consequences of the right to health as a human rights component must also be founded on human rights principles, such as non-discrimination, participation, and sustainability. Any action taken by the state that restricts the rights and freedoms of the people must be legitimate, necessary, and proportionate, and the policies must be followed with clear guidelines and specifications. The government has implemented policies aimed at reducing the impact of the COVID-19 spread, such as large-scale restrictions and the imposition of restrictions on community activities, one of which is restrictions on the right to move, which will slow down people's economic movement.

Presidential Regulation No. 14 of 2021 concerning Amendments to Presidential Regulation Number 99 of 2020 concerning Vaccine

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<sup>73</sup> Alberto Giubilini & Julian Savulescu, "Vaccination, Risks, and Freedom: The Seat Belt Analogy" (2019) 12:3 Public Health Ethics 237–249.

<sup>74</sup> Zaid, Hernowo & Prasetyoningsih, *supra* note 17.

<sup>75</sup> *Ibid.*

<sup>76</sup> A Arora, "Implementing a mandatory COVID-19 vaccine: ethical challenges" (2022) 142:3 Perspect Public Health 147–148.

Procurement and Vaccination Implementation in the Context of Combating the Corona Virus Disease 219 (Covid-19). This regulation states that every person designated as a target vaccine recipient is based on the regulation carried out by the Ministry of Health. Mandatory provisions for vaccination for citizens are carried out in the context of overcoming the Covid-19 pandemic. The main target of vaccine recipients is the Indonesian citizens residing in Indonesia. The government continues to provide encouragement and advice. This regulation is very useful in anticipating health emergencies which ultimately lead to the health quarantine of the Indonesian people.<sup>77</sup>

Government-provided vaccinations fulfill the right to health.<sup>78</sup> The ICESCR guarantees the right to health by stating that "states participating in the Covenant must recognize everyone to enjoy the highest standards achievable in terms of physical and mental health." Thus, the public is entitled to physical and mental health standards with the highest attainable health standards.<sup>79</sup>

Like the COVID-19 pandemic, the right to health is a right that must be considered because it is related to the disease.<sup>80</sup> Policies on the right to health have been regulated in several national laws to ensure high health standards. The aspects of the right to health include: (1) The Right to Health is inclusive. The point is that the right to health is a right that must be fulfilled because one of the rights that supports fundamental human rights is the right to life. The Committee on Economic, Social and Cultural Rights is responsible for monitoring the ICESCR or those that can achieve healthy goals; (2) The right to health contains freedom. Freedom, in the context of this discussion, refers to the lack of forced medical operations such as experiments or sterilization without informed

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<sup>77</sup> Dalinama Telaumbanua, "Urgensi Pembentukan Aturan Terkait Pencegahan Covid-19 di Indonesia" (2020) 12:01 QALAMUNA J Pendidikan, Sos dan Agama 59–70.

<sup>78</sup> Farina Gandryani & Fikri Hadi, "Pelaksanaan Vaksinasi Covid-19 Di Indonesia: Hak atau Kewajiban Warga Negara" (2021) 10:1 J Rechtsvinding 23–41.

<sup>79</sup> I Ketut Sukawati Lanang Putra Perbawa, "Kebijakan Pemerintah Indonesia Dalam Menanggulangi Covid-19 Berdasarkan Instrumen Hukum Internasional" (2021) 10:1 J Ilmu Sos dan Hum 197.

<sup>80</sup> *Ibid.*



consent. Freedom also refers to the absence of torture, cruelty, inhumanity, or other types of medically-related degradation of human dignity; (3) The right to health; (4) Provision of health services, goods, and facilities regardless of race or without discrimination, Non-discrimination is the most critical thing in order to realize the high health standards to be achieved; (5) There must be accessibility, acceptability, and high quality in all products, services, and infrastructure.<sup>81</sup> Lastly, in practice, The state may regulate immunizations to be administered selectively to provide maximum benefit to those at risk.<sup>82</sup>

Once all the information has been presented, one thing that people need to pay attention to is that according to the Law No. 4 Of 1984 Concerning Outbreaks Of Infectious Diseases, target recipients of the COVID-19 vaccine who meet the criteria but refuse vaccination will face criminal penalties under Presidential Regulation No. 14 of 2021 concerning Amendments to Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the Context of Combating the Corona Virus Disease 219 (Covid-19). The goal of implementing the COVID-19 vaccination is not only to protect the humans individually but also to focus on other goals, namely to protect the interests of public's interests in general, given that the various types of health care are optional<sup>83</sup>.

## VI. CONCLUSION

Because COVID-19 immunization boosts herd immunity, which protects individuals and the community, many people believe that getting vaccinated against the disease should be a legal requirement. It is generally accepted that mandatory immunizations are the most effective strategy to reduce the risk of COVID-19 spreading throughout the population and raise the overall vaccination coverage rate. On the basis of this, the state has the authority to impose the mandatory COVID-19 immunization program

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<sup>81</sup> *Ibid.*

<sup>82</sup> Mtimkulu-Eyde et al, *supra* note 61.

<sup>83</sup> Jeannifer Jeannifer, "Sanksi Pidana Terhadap Penolak Vaksin COVID-19 Di Indonesia" (2021) 19:1 Al Qodiri J Pendidikan, Sos dan Keagamaan 164–169.

to ensure the safety and security of the public's health and satisfy the rights of the public's health. Nevertheless, the state must continue to prevent human rights violations by being free from non-consensual medical treatments such as medical experiments and research or forced sterilization and to obtain freedom from torture, cruelty, inhumanity, or degrading dignity in medicine. On the other hand, the state is also responsible for providing health goods and facilities without discriminating against race or discrimination. Non-discrimination is an essential thing in order to realize the high degree of health to be achieved. There must be accessibility, acceptability, and high quality in all products, services, and infrastructure. Lastly, the state may regulate immunizations to be administered selectively to provide maximum benefit to those most at risk.

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