

# SHOULD THE VIOLATORS OF MANDATORY COVID-19 VACCINATION BE PUNISHED IN INDONESIA?: HUMAN RIGHTS PERSPECTIVE

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## **Abstract**

*This study aims to explore the views of human rights regarding the mandatory COVID-19 vaccination policy in Indonesia and how the views related to the penalties imposed on violators of the mandatory COVID-19 vaccination. By utilizing normative methods and descriptive analysis based on secondary data, and using conceptual and legal approaches, this research ultimately found complexities in the mandatory vaccination policy, especially in COVID-19 cases. This is because there are different views, opposing interests, and pros and cons regarding its implementation and punishment. However, this study finds that the mandatory COVID-19 vaccination policy has legitimacy from a human rights perspective and the accompanying sanctions for violators. The reason to protect others by reducing transmission and the health threat has become a big reason and a solid justification behind it. On the other hand, human rights still do not approve of types of punishment that damage a person's physical health or cause mental or psychological harm and damage or reduce rights that cannot be reduced, such as fundamental rights.*

**Keywords:** Covid-19; Mandatory Vaccination; Human Rights; Sanction; Punishment

## **1. Introduction**

Health is the ultimate necessity for humans to carry out all their activities. It is an indicator of their level of welfare so that every human being will make various efforts to get a healthy life. Currently, the development of the health sector in Indonesia has a double burden, such as infectious diseases and degenerative diseases. Eradication of infectious diseases is challenging because they can spread in many areas.<sup>1</sup> The case that is currently ongoing is related to Covid-19.

Currently, the ongoing global pandemic coronavirus-2019 (COVID-19) caused by acute respiratory syndrome coronavirus 2 (SARS-CoV-2) continues to spread across regions to countries causing unprecedented morbidity and mortality. Even the most powerful healthcare institutions previously struggled to deliver adequate treatment for COVID-19 patients. The only natural method to lessen COVID-19's socioeconomic cost and pressure on the healthcare system is to develop SARS-CoV-2 herd immunity.<sup>2</sup> In this scenario, immunization through vaccination offers

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<sup>1</sup> Any Fitriyani, Endang Sutrisno, and Waluyadi Waluyadi, "The Legal Study of the Compulsory Immunization Program to Comply with Children's Right to Health," *Proceedings of the International Conference on Agriculture, Social Sciences, Education, Technology and Health (ICASSETH)*, April 7, 2020, 89–92, <https://doi.org/10.2991/ASSEHR.K.200402.020>.

<sup>2</sup> Tsvetelina Velikova and Tsvetoslav Georgiev, "SARS-CoV-2 Vaccines and Autoimmune Diseases amidst the COVID-19 Crisis," *Rheumatology International* 41, no. 3 (March 1, 2021): 509–18, <https://doi.org/10.1007/S00296-021-04792-9/FIGURES/1>.

a ray of hope as a therapeutic and preventive method that dramatically reduces the negative consequences of COVID-19.<sup>3</sup>

Indeed, a vaccine to protect against severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) has been on the agenda of most policymakers and individuals as the second wave of COVID-19 in countries around the world grows, and there is increasing pressure on healthcare systems.<sup>4</sup> Some of these policy agendas include the mandatory COVID-19 vaccination policy. However, some countries in the world do not implement mandatory policies and are more likely to apply voluntary COVID-19 vaccinations. Still, among others, they are more inclined to enforce mandatory COVID-19 vaccination policies. And Indonesia is one country that implements the mandatory COVID-19 vaccine policy.

One of the challenges in studying this issue is less understanding of COVID-19. Despite fact that the disease has gotten a lot of attention throughout the world. It's yet unclear if being exposed to the virus offers immunity. Public policies, on the other hand, are frequently made in the face of ambiguity. Public policy cannot be postponed. It must prepare for the following coming challenges and possibilities that may arise.<sup>5</sup>

In addition, there are challenges to the mandatory COVID-19 vaccination policy because there are pros and cons related to the policy where there are still many groups of people who reject the policy. Starting from the Conspiracy believers<sup>6</sup>, anti-vax movement<sup>7</sup>, adherents of the ideology of libertarianism (libertarians)<sup>8</sup> to not infrequently also from human rights activists. Not a few see punitive policy regimes like forced choices or charging as a fair and effective approach to deal with negative externalities, but rather as an unlawful use of state authority that severely restricts individual liberty. And even deprive citizens of basic human rights.<sup>9</sup> This, of course, undeniably,

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<sup>3</sup> Parikshit Sen et al., "COVID-19 Vaccination in Autoimmune Disease (COVAD) Survey Protocol," *Rheumatology International* 42, no. 1 (November 15, 2021): 23–29, <https://doi.org/10.1007/S00296-021-05046-4>.

<sup>4</sup> Roy M. Anderson et al., "Challenges in Creating Herd Immunity to SARS-CoV-2 Infection by Mass Vaccination," *The Lancet* 396, no. 10263 (November 21, 2020): 1614–16, [https://doi.org/10.1016/S0140-6736\(20\)32318-7/ATTACHMENT/EDAC053B-B974-45C4-8B29-00C2CF954F07/MMC1.PDF](https://doi.org/10.1016/S0140-6736(20)32318-7/ATTACHMENT/EDAC053B-B974-45C4-8B29-00C2CF954F07/MMC1.PDF).

<sup>5</sup> Dorit R. Reiss and Arthur L. Caplan, "Considerations in Mandating a New Covid-19 Vaccine in the USA for Children and Adults," *Journal of Law and the Biosciences* 7, no. 1 (July 25, 2020), <https://doi.org/10.1093/JLB/LSAA025>.

<sup>6</sup> Alison M. Bacon and Steven Taylor, "Vaccination Hesitancy and Conspiracy Beliefs in the UK During the SARS-COV-2 (COVID-19) Pandemic," *International Journal of Behavioral Medicine*, no. 3 (October 1, 2021): 1–8, <https://doi.org/10.1007/S12529-021-10029-7/TABLES/3>.

<sup>7</sup> Oguz Uzun et al., "COVID-19: Vaccination vs. Hospitalization," *Infection* 2022 1 (January 4, 2022): 1–6, <https://doi.org/10.1007/S15010-021-01751-1>.

<sup>8</sup> Quassim Cassam, "Misunderstanding Vaccine Hesitancy: A Case Study in Epistemic Injustice," *Educational Philosophy and Theory*, 2021, <https://doi.org/10.1080/00131857.2021.2006055>.

<sup>9</sup> Alexander Reese and Ingo Pies, "Paying People for Getting Vaccinated? A Favorable Solution for Both Vaccine-Hesitant Persons and the Public," *Bioethics*, January 15, 2022, <https://doi.org/10.1111/BIOE.13001>; Catherine

will disrupt and become a threat to achieving population immunity during the COVID-19 pandemic.<sup>10</sup>

Thus, this research will focus on the views of human rights regarding the mandatory COVID-19 vaccination policy in Indonesia and also how the views regarding the penalties imposed on violators of the mandatory COVID-19 vaccination will be.

## **2. Method**

Based on the purpose of this research, there are several essential things in this research method. First, this research was conducted since the mandatory vaccination policy began formalizing, intensified, and tightening in Indonesia (mid-2021 to early 2022). Second, this research will tend to be normative or doctrinal because it will focus on laws and regulations and doctrines in legal theory (which in this case is the doctrine of human rights) so that the approach will tend to be statutory and conceptual.

Third, this research uses secondary data as the data source. Secondary data in this research includes primary legal materials taken from laws and regulations that are still in force, such as the Presidential Regulation Number 14 of 2021 concerning Amendments to Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the Context of Combating the 2019 Corona Virus Disease (Covid-19) Pandemic, as well as secondary legal materials that will explain primary legal materials, such as books or reputable international journals relating to mandatory vaccines and their policies as well as human rights. Furthermore, the data obtained from the legal materials are then collected and analyzed using descriptive methods.

## **3. Results and Discussion**

### **3.1. Human Rights Perspective on the Mandatory Policy of COVID-19 Vaccination**

There are different views regarding this matter. Katharina T. Paul and Kathrin Loer argued that vaccination was initially carried out voluntarily since the mid-1960s.<sup>11</sup> It was only later that

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Helps et al., "Understanding Non-Vaccinating Parents' Views to Inform and Improve Clinical Encounters: A Qualitative Study in an Australian Community," *BMJ Open* 9, no. 5 (May 1, 2019): e026299, <https://doi.org/10.1136/BMJOPEN-2018-026299>.

<sup>10</sup> Bacon and Taylor, "Vaccination Hesitancy and Conspiracy Beliefs in the UK During the SARS-COV-2 (COVID-19) Pandemic."

<sup>11</sup> Katharina T. Paul and Kathrin Loer, "Contemporary Vaccination Policy in the European Union: Tensions and Dilemmas," *Journal of Public Health Policy* 40, no. 2 (June 1, 2019): 172, <https://doi.org/10.1057/S41271-019-00163-8/FIGURES/1>.

vaccination became mandatory as time went by. Meanwhile, according to Della Maneze et al., the mandatory vaccination policy is not something new or new, the historical origins of the policy can be traced back to the Ottoman Empire (around the 1700s). At that time, Edward Jenner introduced variolation and then vaccination for the first time. Mandatory vaccination policies were also implemented by WHO between the 1800s and 1900s, when there was smallpox, to eradicate the disease.<sup>12</sup>

The current facts, policies regarding to vaccination have changed and tend to be mandated more often recently. Mandatory vaccinations involve the interference of the State with the private lives of individuals, as they force the public to be vaccinated, regardless of the person's consent or not.<sup>13</sup> Therefore, the mandatory vaccination policy raises legal issues,<sup>14</sup> especially in this case, human rights.

The significant legal difficulties of mandatory COVID-19 vaccination arise from its use as a vaccination push scheme.<sup>15</sup> The requirement of mandatory medical treatments has been a contentious topic of discussion since the beginning of time, especially in law and public policy. The right to individual self-determination and the duty to maintain and preserve collective safety are two competing interests that are, in their own manner, guaranteed by international treaties and constitutional requirements. What is at issue are these two interests, which directly oppose one another.<sup>16</sup> Therefore, no question that balancing the freedom of individual choice in health behavior with the more significant interest of the community and society is always a difficult task in public health policy.<sup>17</sup>

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<sup>12</sup> Della Maneze et al., "Mandatory COVID-19 Vaccination for Healthcare Workers: A Discussion Paper," *International Journal of Nursing Studies* 138 (February 1, 2023): 104389, <https://doi.org/10.1016/j.ijnurstu.2022.104389>.

<sup>13</sup> Francesca Camilleri, "Compulsory Vaccinations for Children: Balancing the Competing Human Rights at Stake," *Netherlands Quarterly of Human Rights* 37, no. 3 (September 1, 2019): 245–67, <https://doi.org/10.1177/0924051919861797>.

<sup>14</sup> Camilleri.

<sup>15</sup> Tamar Luster et al., "Promoting Vaccination from a Human Rights and Equity Perspective: Lessons from the Israeli 'Green Pass,'" *European Journal of Risk Regulation* 12, no. 2 (June 1, 2021): 308–20, <https://doi.org/10.1017/ERR.2021.36>.

<sup>16</sup> Filippo Gibelli et al., "COVID-19 Compulsory Vaccination: Legal and Bioethical Controversies," *Frontiers in Medicine* 9 (February 2, 2022), <https://doi.org/10.3389/fmed.2022.821522>.

<sup>17</sup> Catherine Helps, Julie Leask, and Lesley Barclay, "'It Just Forces Hardship': Impacts of Government Financial Penalties on Non-Vaccinating Parents," *Journal of Public Health Policy* 2018 39:2 39, no. 2 (January 22, 2018): 156–69, <https://doi.org/10.1057/S41271-017-0116-6>; Julie Leask and Margie Danchin, "Imposing Penalties for Vaccine Rejection Requires Strong Scrutiny," *Journal of Paediatrics and Child Health* 53, no. 5 (May 1, 2017): 439–44, <https://doi.org/10.1111/JPC.13472>.

Indeed, vaccination is mandatory by nature and was initially utilized to provide “herd immunity,” but this is often denied due to violations of human rights and autonomy.<sup>18</sup> Therefore, the legal reason for individuals to oppose mandatory vaccination is that mandatory vaccination is a form of deprivation of rights.<sup>19</sup>

Indeed, it cannot be denied that regulation of mandatory COVID-19 vaccination is a violation of human rights, especially the rights to freedom, body authority, and choice. Therefore, Daniel Rodger and Bruce P. Blackshaw also rejected the mandatory COVID-19 vaccination because they failed to respect moral integrity and autonomy of a person's body, which is protected by human rights. However, it offers another alternative in the form of rapid antigen testing because it is less coercive and fairer.<sup>20</sup> However, the violations created are still very small and not as big as the benefits obtained. Accordingly, Daniel Sokol openly admitted that mandatory vaccine was a justified “minor violation” to protect the health of others and used France as a successful model “vaccine mandate”, increasing the vaccination rate from 60% to 99%.<sup>21</sup>

Based on this explanation, in essence, the mandatory COVID-19 vaccination still has its place and legitimacy in human rights. In formulating national health policies and global health governance, policymakers have grown to rely on and consider collectively human rights. Human rights law provides a universal foundation for promoting fairness in public health, creates international norms to guide government commitments, and makes it easier to hold governments accountable for meeting the highest health standards possible. Indeed, health-related human rights have expanded drastically to provide a normative framework for public health, addressing challenges to person dignity as “violations of rights under international law.”<sup>22</sup>

Concerning the mandatory COVID-19 vaccination, it has been proposed in various contexts. The COVID-19 vaccine reduces the risk of contracting COVID-19, experiencing severe illness or death, and transmitting COVID-19 to others, while reports of serious harm from the vaccine are

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<sup>18</sup> Fung Kei Cheng, “Debate on Mandatory COVID-19 Vaccination,” *Ethics, Medicine and Public Health*, January 24, 2022, 100761, <https://doi.org/10.1016/J.JEMEP.2022.100761>.

<sup>19</sup> Kyle McAllister-Grum, “Pigments and Vaccines: Evaluating the Constitutionality of Targeting Melanin Groups for Mandatory Vaccination,” *Journal of Legal Medicine* 37, no. 1–2 (April 3, 2017): 217–47, <https://doi.org/10.1080/01947648.2017.1303288>.

<sup>20</sup> Daniel Rodger and Bruce P. Blackshaw, “COVID-19 Vaccination Should Not Be Mandatory for Health and Social Care Workers,” *The New Bioethics*, January 20, 2022, 1–13, <https://doi.org/10.1080/20502877.2022.2025651>.

<sup>21</sup> Daniel Sokol, “Covid-19 Vaccination Should Be Mandatory for Healthcare Workers,” *BMJ* 375 (November 2, 2021), <https://doi.org/10.1136/BMJ.N2670>.

<sup>22</sup> Benjamin Mason Meier, Dabney P. Evans, and Alexandra Phelan, “Rights-Based Approaches to Preventing, Detecting, and Responding to Infectious Disease,” *Infectious Diseases in the New Millennium* 82 (2020): 217, [https://doi.org/10.1007/978-3-030-39819-4\\_10](https://doi.org/10.1007/978-3-030-39819-4_10).

rare.<sup>23</sup> For James E. Hurford,<sup>24</sup> the excuse of protecting others by reducing transmission is a more substantial justification, such justification tends to have a utilitarian appeal; legislature promotes the good as much as possible. This also makes logical sense in human rights. Among these are health threats that can justify imposing vaccines.<sup>25</sup> Accordingly, states have the authority to impose restrictions on the enjoyment of most human rights to protect the rights of others or collective interests.<sup>26</sup> In addition, the justification for protecting health is also a legitimate goal, primarily since reducing the pandemic alleviates human rights violations resulting from the COVID-19 reaction, allows people to return to their everyday lives, and boosts economic activity.<sup>27</sup>

In summary, while being the most disruptive type of vaccination policy, vaccine delivery has resulted in high vaccine uptake among the community. As a result, there is growing support for making the COVID-19 vaccination obligatory once it is ready. It also comes from groups such as utilitarians<sup>28</sup> and libertarians.<sup>29</sup> Nevertheless, according to public health ethical considerations, mandatory vaccination policy for adults should be used only as a last option. Other public health measures that have clear proof of severe damage to others, such as smoking in public areas is prohibited, and driving while intoxicated is prohibited, have also been made mandatory. In the past, obligatory vaccination programs were more frequently accepted in emergencies owing to epidemics that posed a threat due to poor vaccine uptake caused by voluntary policies, particularly in health care and education settings.<sup>30</sup>

For this reason, Italy, France, and Germany are among the EU/EEA nations that have implemented mandatory vaccination regimes, with new legislation enacted in 2017, 2018, and

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<sup>23</sup> Olivia S. Kates et al., “Ethical Review of COVID-19 Vaccination Requirements for Transplant Center Staff and Patients,” *American Journal of Transplantation* 00 (2021): 1–10, <https://doi.org/10.1111/AJT.16878>.

<sup>24</sup> James E. Hurford, “COVID-19 and Compulsory Vaccination: An Acceptable Form of Coercion?,” *The New Bioethics: A Multidisciplinary Journal of Biotechnology and the Body*, December 14, 2021, 1–23, <https://doi.org/10.1080/20502877.2021.2010441>.

<sup>25</sup> Andrzej Grzybowski et al., “Vaccination Refusal. Autonomy and Permitted Coercion,” *Pathogens and Global Health* 111, no. 4 (May 19, 2017): 200–205, <https://doi.org/10.1080/20477724.2017.1322261>.

<sup>26</sup> Audrey Lebre, “COVID-19 Pandemic and Derogation to Human Rights,” *Journal of Law and the Biosciences* 7, no. 1 (July 25, 2020): 1–15, <https://doi.org/10.1093/JLB/LSAA015>.

<sup>27</sup> Luster et al., “Promoting Vaccination from a Human Rights and Equity Perspective: Lessons from the Israeli ‘Green Pass.’”

<sup>28</sup> Zaid Zaid, Wempy Setyabudi Hernowo, and Nanik Prasetyoningsih, “Mandatory COVID-19 Vaccination in Human Rights and Utilitarianism Perspectives,” *International Journal of Public Health Science (IJPHS)* 11, no. 3 (September 2022): 967, <https://doi.org/10.11591/ijphs.v11i3.21412>.

<sup>29</sup> Yudi Setiawan et al., “A Libertarian Legitimacy for Mandatory Covid-19 Vaccination,” *Jurnal Media Hukum* 29, no. 2 (October 14, 2022): 94–106, <https://doi.org/10.18196/JMH.V29I2.14313>.

<sup>30</sup> Rachel Gur-Arie, Euzebiusz Jamrozik, and Patricia Kingori, “No Jab, No Job? Ethical Issues in Mandatory COVID-19 Vaccination of Healthcare Personnel Commentary Handling Editor Seye Abimbola,” *BMJ Global Health* 6 (2021): 4877, <https://doi.org/10.1136/bmjgh-2020-004877>.

2020, respectively. However, they vary greatly in terms of punishments and penalties.<sup>31</sup> Including Indonesia. It's just that a complete understanding of the operation of a vaccine mandate policy (actual or potential) requires attention to the separate components of that policy. However, we can synthesize information on policy coverage, sanctions, severity, and selectivity to identify further attributes that determine the magnitude of the state's burden on those who are not vaccinated.<sup>32</sup> And in this study, the scope related to sanctions will be the focus of discussion which will be discussed further below.

### **3.2. Human Rights Perspective on Sanctions given to Violators of the Mandatory COVID-19 Vaccination**

In the mandatory COVID-19 immunization, all forms of pressure can come into play, from punishments to prizes. The measures to enforce vaccination choices will be considered part of the vaccines' ethical review.<sup>33</sup> However, mentioning that the term "mandatory" is employed in the literature in various ways is significant. Mandatory programs are defined in this article as those that limit participation while punishing non-participation. This is because the current law regarding mandatory vaccination tends to impose penalties for those who violate the regulations.<sup>34</sup> This is because the current law regarding mandatory vaccination tends to impose penalties for those who violate the regulations.<sup>35</sup> However, it should be noted that the penalties for refusing mandatory vaccination are not uniform. Because on one end of the vaccine policy spectrum, there are less stringent and harsh options, while on the other, there are more stringent options, namely mandatory mandates backed by law where non-compliance has the potential to result in imprisonment.<sup>36</sup>

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<sup>31</sup> Anna Odone et al., "Current Understandings of the Impact of Mandatory Vaccination Laws in Europe," *Expert Review of Vaccines* 20, no. 5 (2021): 559–75, <https://doi.org/10.1080/14760584.2021.1912603>.

<sup>32</sup> Katie Attwell and Mark C. Navin, "Childhood Vaccination Mandates: Scope, Sanctions, Severity, Selectivity, and Salience," *The Milbank Quarterly* 97, no. 4 (December 1, 2019): 978–1014, <https://doi.org/10.1111/1468-0009.12417>.

<sup>33</sup> Steven R. Kraaijeveld, "Vaccinating for Whom? Distinguishing between Self-Protective, Paternalistic, Altruistic and Indirect Vaccination," *Public Health Ethics* 13, no. 2 (July 1, 2020): 190–200, <https://doi.org/10.1093/phe/phaa005>.

<sup>34</sup> Armand H. Matheny Antommara, "An Ethical Analysis of Mandatory Influenza Vaccination of Health Care Personnel: Implementing Fairly and Balancing Benefits and Burdens," *The American Journal of Bioethics* 13, no. 9 (2013): 30–37, <https://doi.org/10.1080/15265161.2013.814731>.

<sup>35</sup> Yulan Lin et al., "Understanding COVID-19 Vaccine Demand and Hesitancy: A Nationwide Online Survey in China," *PLOS Neglected Tropical Diseases* 14, no. 12 (December 1, 2020): e0008961, <https://doi.org/10.1371/JOURNAL.PNTD.0008961>; Baobin Huang, "The New China Vaccine Administration Law: Re-Establishing Confidence in Vaccines," *Biologicals* 61 (September 1, 2019): 95–96, <https://doi.org/10.1016/J.BIOLOGICALS.2019.08.007>.

<sup>36</sup> Attwell and C. Navin, "Childhood Vaccination Mandates: Scope, Sanctions, Severity, Selectivity, and Salience," December 1, 2019.

In general, there have been pros and cons regarding the imposition of penalties for the mandatory COVID-19 vaccination policy. On the contra side, Rossen et al. for example, those who strongly oppose that punitive sanctions can undermine trust or even provoke moral outrage, precisely because the vaccination of “fence-sitters” and especially “rejecters” shows a high sensitivity to freedoms- concerns related to vaccination.<sup>37</sup> According to the cons, too, they argue that the State should refrain from punishing disobedience and prefer lighter punishments. If civil disobedience is considered as a political right, the government should not penalize dissenters, for that would be “the same as punishing someone for exercising the right to vote or the right to free speech”. Assume, however, that civil disobedience is regarded as a political right (as is the case with voting or free speech). In that case, one could question why dissidents should be penalized for their activities, leading in the right not to be punished.<sup>38</sup>

So those who are against it conclude that punishing vaccine refusal is not the most effective and unfair way to increase vaccination rates when it carries significant social and economic risks for those who are most vulnerable. Punishments also add to the losses for communities who are already more vulnerable (in this case to COVID-19) by effectively punishing them.<sup>39</sup>

In fact, a violator can be penalized for violating vaccine obligations like traffic violators. Intuitively, drivers can be legally fined for their violations. If he continues to drive dangerously, he could be further punished. As to develop safe driving behaviors, speed limits and other driving rules and regulations are in place. And, of course, this is not against human rights. They strive to ensure that every driver does their part in keeping others safe on the road.<sup>40</sup>

The question arises how and what kind of punishment should be given to violators. Because not all types of punishment can be justified in terms of human rights. Article 3 of the European Convention on Human Rights (ECHR) "No one shall be subjected to torture or inhuman or degrading treatment or punishment" states that here, the state is not justified, and therefore, must refrain from the punishment that damages a person's physical health or causes mental harm. or

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<sup>37</sup> Isabel Rossen et al., “Accepters, Fence Sitters, or Rejecters: Moral Profiles of Vaccination Attitudes,” *Social Science & Medicine* 224 (March 1, 2019): 23–27, <https://doi.org/10.1016/J.SOCSCIMED.2019.01.038>.

<sup>38</sup> Yoann Della Croce and Ophelia Nicole-Berva, “Civil Disobedience in Times of Pandemic: Clarifying Rights and Duties,” *Criminal Law and Philosophy*, July 28, 2021, 1–20, <https://doi.org/10.1007/S11572-021-09592-7>.

<sup>39</sup> Leask and Danchin, “Imposing Penalties for Vaccine Rejection Requires Strong Scrutiny.”

<sup>40</sup> Isha Ann Emhoff, Ellen Fugate, and Nir Eyal, “Is There a Moral Right to Nonmedical Vaccine Exemption?,” *American Journal of Law and Medicine* 42, no. 2–3 (May 1, 2016): 598–620, <https://doi.org/10.1177/0098858816658281>.



psychological.<sup>41</sup> State must not reduce non derogable rights, including the right to life, prohibition of torture and ill-treatment, prohibition of slavery, and no punishment without law.<sup>42</sup>

On the other hand, punishment in the form of imprisonment is also not free from criticism because the sanctions are considered too harsh and too criminalizing. And China is probably a country with severe penalties for violators of mandatory vaccination. Where a Chinese court issued a decree that existing laws criminalizing the willful spread of the disease be applied to SARS, carrying sentences from 10 years in prison to execution. However, these public health measures have been criticized for being employed arbitrarily and discriminatorily, and so being incompatible with the appropriate use of quarantine or isolation measures in public health. While these country measures are consistent with the international health law, they face the possibility of infringing international human rights law, which includes the protection of the right to life, the right to health, freedom of movement, and the right to free expression.<sup>43</sup>

On the other hand, more democratic countries have lighter and varied forms of punishment with various clauses, such as “no jab no pay” in Australia or “no jab no play” in Italy,<sup>44</sup> or the 'no-jab, no-job clause' that appears in many countries.<sup>45</sup> Meanwhile, in Indonesia, “Article 13A paragraph (4) of Presidential Regulation Number 14 of 2021 concerning Amendments to Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the Context of Combating the 2019 Corona Virus Disease (Covid-19) Pandemic is clearly stated for whom only those who do not participate in the COVID-19 vaccination, will be subject to administrative sanctions, in the form of: a) postponement or termination of the provision of social security or social assistance; b) postponement or termination of government administration services; and/or, c) fine.

Indeed, it is observed that Indonesia focuses on administrative sanctions rather than criminal sanctions of imprisonment. Just like what Grzybowski et al also commented that mandatory vaccinations are commonly introduced and enforced through legal remedies ranging from financial

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<sup>41</sup> Rhiannon Frowde, Edward S. Dove, and Graeme T. Laurie, “Fail to Prepare and You Prepare to Fail: The Human Rights Consequences of the UK Government’s Inaction during the COVID-19 Pandemic,” *Asian Bioethics Review* 12, no. 4 (November 2, 2020): 459–80, <https://doi.org/10.1007/S41649-020-00151-1>.

<sup>42</sup> Lebret, “COVID-19 Pandemic and Derogation to Human Rights.”

<sup>43</sup> Meier, Evans, and Phelan, “Rights-Based Approaches to Preventing, Detecting, and Responding to Infectious Disease.”

<sup>44</sup> Julian Savulescu, “Good Reasons to Vaccinate: Mandatory or Payment for Risk?,” *Journal of Medical Ethics* 47, no. 2 (February 1, 2021): 78–85, <https://doi.org/10.1136/medethics-2020-106821>.

<sup>45</sup> Jeff Clyde G. Corpuz, “No-Jab, No-Job Clause: Ethical Issues and Legal Impediments,” *Journal of Public Health* 43, no. 2 (June 7, 2021): e405–6, <https://doi.org/10.1093/PUBMED/FDAB089>.

and administrative penalties to restrictions on liberty.<sup>46</sup> Rarely does anyone go through imprisonment. And reflecting on the policies of Australia and Italy, the implementation is in the form of administrative sanctions.

Even so, criticism still comes. In the opinion of Michelle M. Mello, Ross D. Silverman, and Saad B. Omer, neither fines nor criminal penalties should be applied. This is because fines have dire consequences for the poor, and criminal penalties invite legal challenges based on procedural processes. Both are shabby public health policies for a Covid-19 vaccine because they can fuel mistrust without increasing the absorption.<sup>47</sup> Michelle M. Mello, Ross D. Silverman, and Saad B. Omer further explained that because of the contagion and danger of the virus, relatively substantive penalties can still be justified, including suspension of work or stay-at-home orders for people in high-priority groups who appointees who refuse more vaccination can be encouraged.<sup>48</sup>

However, financial fines can be a useful tool in a complete mandatory vaccination program, but they must be used in conjunction with other measures, such as a consistent supply of vaccinations and vaccine education, to reach people who refuse to get vaccinated.<sup>49</sup> This strategy is also increasingly needed in the midst of people who may still be reluctant or may hesitate.<sup>50</sup> As a result, penalties such as fines and other administrative sanctions may seem more appropriate because they would allow the State to publicly punish disobedience while not denying them their right to disobey.<sup>51</sup>

The level of penalty depends on level of mistake.<sup>52</sup> However, punishment that tends to injure fundamental human rights, such as the right to life, is prohibited in human right perspective. Because, state emergency must not diminish the right to life, the right to be free from torture, cruel or degrading treatment or punishment, and free from medical or scientific experimentation without free consent, the provisions limitations based on public health interests and not designed or imposed arbitrarily, i.e., in an unreasonable or discriminatory way.<sup>53</sup>

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<sup>46</sup> Grzybowski et al., "Vaccination Refusal. Autonomy and Permitted Coercion."

<sup>47</sup> Michelle M. Mello, Ross D. Silverman, and Saad B. Omer, "Ensuring Uptake of Vaccines against SARS-CoV-2," *New England Journal of Medicine* 383, no. 14 (October 1, 2020): 1296–99, [https://doi.org/10.1056/NEJMP2020926/SUPPL\\_FILE/NEJMP2020926\\_DISCLOSURES.PDF](https://doi.org/10.1056/NEJMP2020926/SUPPL_FILE/NEJMP2020926_DISCLOSURES.PDF).

<sup>48</sup> Mello, Silverman, and Omer.

<sup>49</sup> Olivia M. Vaz et al., "Mandatory Vaccination in Europe," *Pediatrics* 145, no. 2 (February 1, 2020): e20190620, <https://doi.org/10.1542/peds.2019-0620>.

<sup>50</sup> Grzybowski et al., "Vaccination Refusal. Autonomy and Permitted Coercion."

<sup>51</sup> Della Croce and Nicole-Berva, "Civil Disobedience in Times of Pandemic: Clarifying Rights and Duties."

<sup>52</sup> Katie Attwell and Mark C. Navin, "Childhood Vaccination Mandates: Scope, Sanctions, Severity, Selectivity, and Salience," *The Milbank Quarterly* 97, no. 4 (December 1, 2019): 978, <https://doi.org/10.1111/1468-0009.12417>.

<sup>53</sup> Cholidah and Nu'man Aunuh, "Overview of Covid-19 Vaccination Obligations within the Human Rights Framework in Indonesia," *Proceedings of the 2nd International Conference on Law Reform (INCLAR)*, November 22, 2021, 201–5, <https://doi.org/10.2991/ASSEHR.K.211102.197>; Nanik Prasetyoningsih et al., "State Obligation

On the other hand, the government is required to ensure adequate and accessible supplies to its people for mandatory COVID-19 vaccination program. Otherwise, the resistance to punishment may challenge the legitimacy of policy. Mandates can also victimize people who are hesitant about the vaccination if the government does not do enough to convince them of the benefits of vaccination. Therefore, ideally, the mandate should not be considered a substitute for other aspects of the vaccination program but rather an addition to existing and complementary efforts to encourage complete vaccination.<sup>54</sup>

#### **4. Conclusion**

There are complexities in the mandatory vaccination policy, especially in COVID-19 cases because of different views, opposing interests, pros and cons regarding to its implementation and punishment. Regarding different views, this research found differences related to the time of mandatory vaccination was implemented. From opposing interests perspective, this research found that the mandatory COVID-19 vaccination policy is potential to conflict with "self-determination and the obligation to defend and maintain collective safety." In addition, in terms of pros and cons regarding implementation and punishment, this research found that there is a debate where one side assumes that civil disobedience against mandatory COVID-19 vaccination is considered a political right that should not be punished. Still, on the other side, some believe that violators can be subject to sanctions. For violating vaccine obligations as likened to traffic violators.

In term of legitimacy for the mandatory COVID-19 vaccination, the reason to protect others by reducing transmission has become a solid justification. And, of course, the health threat is a main reason. Thus, most (individual) human rights can be limited by the state if required to preserve the rights of others or collective interests. However, the sanction component in the mandatory COVID-19 vaccination has been the subject of challenging discussion in various research literature. Although this finding concludes that some sanctions can still be applied to violators of mandatory COVID-19 vaccination, human rights still do not agree with types of punishment that damage a person's physical health or cause mental or psychological harm. Human rights also do not approve sanctions that can damage or reduce rights that cannot be reduced,

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in Fulfilling the Right to Health through the Mandatory COVID-19 Vaccination," *Indonesian Journal of Law and Society* 3, no. 2 (March 7, 2023): 195, <https://doi.org/10.19184/ijls.v3i2.33651>.

<sup>54</sup> Katie Attwell, Jeremy K. Ward, and Sian Tomkinson, "Manufacturing Consent for Vaccine Mandates: A Comparative Case Study of Communication Campaigns in France and Australia," *Frontiers in Communication* 6 (2021): 36, <https://doi.org/10.3389/FCOMM.2021.598602/BIBTEX>.

including the right to life, not to be tortured, ill-treatment, or violations of other guaranteed fundamental rights.

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