

# Criminalization of COVID-19 Vaccine Objector Associated with Siracusa Principles (Study on Provincial Regulation of DKI Jakarta Number 2 of 2020 on Corona Virus Disease Prevention 2019)

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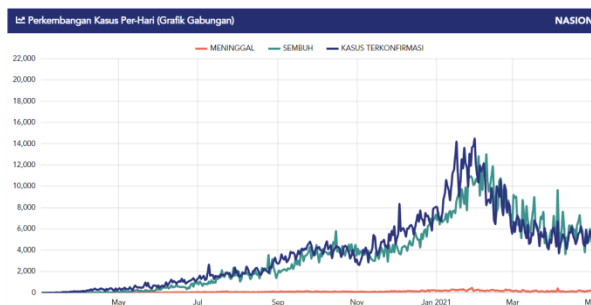
**ABSTRACT**

Corona Virus Disease Pandemic 2019 (COVID-19) has had a far-reaching impact on public health aspects, especially in Indonesia; various efforts have been made by the Government and Local Government in the framework of countering the pandemic, one of which is by setting various laws and regulations as one of the areas most affected by the COVID-19 pandemic. In November 2020, the Local Government of Jakarta issued the Provincial Regulation of DKI Jakarta No. 2 of 2020 on Corona Virus Disease Prevention 2019, which contained criminalization for everyone who deliberately refuses COVID-19 vaccination. This paper aims to parse the formulation of criminalization in the Regulation for COVID-19 vaccination objectors associated with the right to determine for themselves the health services necessary for themselves and the Siracusa Principles (principles on the provisions of restrictions and reduction of rights stipulated in the International Covenant on Civil and Political Rights). The research method used is juridical normative with the approach of legislation. The results showed that the criminalization of COVID-19 vaccination objectors in local regulations is contrary to the right to self-determine the health services needed for itself and the Siracusa Principles.

**Keywords:** Criminalization, Vaccination, Siracusa Principles.

**1. INTRODUCTION**

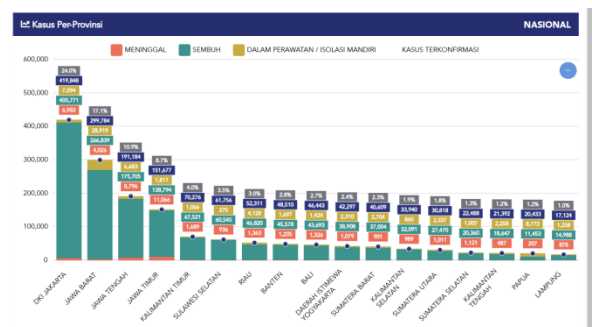
In Indonesia, COVID-19 data continues to increase, as of May 18, 2021, that there were 1,744,045 (+4,295) confirmed, 89,129 Active Cases, and 48,305 deaths (+212 Cases Died). The unstable upgrade data is seen in the following diagram:



Source: <https://COVID19.go.id/peta-sebaran>

One of the measures to minimize that number, the Government encourages vaccination for the community so that there are already as many as 13,803,055 people who carry out the 1st vaccination and 9,066,982 people who have already carried out the 2nd vaccination.[1]

DKI Jakarta ranks first nationally with the highest number of COVID-19 cases in Indonesia at 419,848 (24.0%) on May 19, 2021. Followed by West Java with 299,784 cases (17.1%), then Central Java with 191,184 cases (10.9%) nationally. The percentage of COVID-19 case data per province can be described in the diagram as follows:



Source: <https://COVID19.go.id/peta-sebaran>

Efforts to encourage the community to carry out vaccinations are not only carried out by the Central Government; in order to support the vaccination program, various local governments passed local regulations in order to prevent the spread of COVID-19. One of them, Provincial

Regulation of DKI Jakarta No. 2 of 2020 on Corona Virus Disease Prevention 2019.

Article 30 Provincial Regulation of DKI Jakarta No. 2 of 2020 on Corona Virus Disease Prevention 2019 stipulates that "Any person who intentionally refuses to be treated and/or vaccinated for COVID-19, shall be penalized with a maximum fine of Rp. 5,000,000.00 (five million rupiahs)". In this regional regulation, there are indications of restrictions on human rights through local regulations, not by law.

Indications of criminalization in the COVID-19 vaccination objector Regulations relating to the right to self-determining the necessary health services for themselves and the Siracusa Principles (principles on the provisions of restrictions and reductions of rights stipulated in the International Covenant on Civil and Political Rights) need to be reviewed contrary to whether or not the right to self-determine the health service is needed and also regarding the limitation of human rights through a regional regulation in the perspective of the Siracusa Principles.

Siracusa Principles are principles on the provisions of restrictions and reduction of rights stipulated in the International Covenant on Civil and Political Rights.

The formulation of human rights restrictions, the Constitution expressly stipulates that such restrictions can only be governed by law, as reflected in Article 28J paragraph (2) of the Constitution of the Republic of Indonesia of 1945 stipulates that "In exercising their rights and freedoms, every person shall submit to the restrictions established by law with the sole purpose of ensuring recognition and respect for the rights and freedoms of others and to meet the fair demands by moral considerations, religious values, security, and public order in a democratic society."

In fact, the formulation of human rights restrictions related to choosing health insurance one of them concerning 'vaccination,' there is still regulated in the form of local regulations, even the local regulations regulate criminal sanctions fines for everyone in the area refusing to do treatment and/or vaccination for COVID-19. This article will elaborate that the criminalization of vaccination rejection is allegedly contrary to the Siracusa Principles.

The instrument of national law, also inseparable from the adhered to the instruments of international law, one of which is the "Siracusa Principles," which regulates in detail the limitation, delegation, or restrictions on human rights, including concerning public health, especially the right to choose health insurance.

The problem needs to be examined, such as the regulation and application of Siracusa Principles in the legislation in Indonesia, and related to the limitation of human rights to refuse vaccination in the form of local regulations. The real problem of this research is about the criminalization of vaccine objectors with a sanction, the right to choose health facilities, and the limitation of human rights, not by law, but in this issue Provincial Regulation of DKI Jakarta No. 2 of 2020 on Corona Virus Disease Prevention 2019 punishes a citizen who rejects vaccination, so there is a criminalization by local regulation. This study offers interesting difference from other studies that this study will examine the correlation between the Siracusa Principles and international law, as well as its application in legislation in the new normal era to review the limitation of the right to choose health insurance 'vaccination' in the form of local regulations.

## **2. RESEARCH METHOD**

The method used is normative juridical legal research. Normative research using the approach of legislation (*statute Approach*).[2] The nature of the research used in this study is prescriptive analysis, namely, studying the purpose of the law, the values of justice, the validity of the rule of law, concepts of law, and legal norms.[3] The data source used is secondary data using primary legal materials, secondary legal materials, tertiary legal materials so that the analysis used is qualitative.

## **3. FINDINGS AND DISCUSSION**

### ***1. Siracusa Principles Regarding the Right to Choose Health Insurance***

Human Rights ideas were initially understood as natural rights (Natural Rights) is a common social need and reality, then undergo various changes in line with the changes that occur in beliefs and practices in society.[4]

The idea of human rights is built on the principle of equality. This principle emphasizes that human beings are equal in regard to their dignity and dignity. People have equality in human rights. The differences inherent in people is not a ground for unequal treatments because they remain human beings. This is, for example, reflected in the principle of "*equal pay for equal work*," which in UDHR is considered as the right to equal work. This principle is also human rights.[5]

The national law is in line with international law, i.e., Article 73 of the Human Rights Law, which essentially stipulates that the limitation of human rights is only by law is in line with the Siracusa Principles.

International jurisprudence and comparison between jurisprudence and the Siracusa

Principles on the International Covenant on Civil and Political Rights. A three-part test is used to determine the validity of restrictions imposed on freedom of expression, as reflected in Principles 1.1 and 1.3, or other versions often appear in international and national jurisprudence.[18]

History of the Siracusa Principles, there was an international "plague" of the 1970s state emergency which included political unrest in countries such as Argentina, Brazil, Chile, India, Ireland, Malaysia, and Pakistan. These measures should specifically aim at preventing illness, injury, or providing care for the sick or injured. Moreover, consideration must be given to the international health regulations of the International Health Regulation (IHR). The Siracusa Principles were formulated out of concern about individual human rights violations that might occur when the state acts to protect both communities by restricting individual rights. The principles, taken together, can be interpreted as an attempt to impose careful study and balance individual rights against the interests of the state in ensuring the welfare of the larger population. In the context of restricting public health, the Siracusa Principles require that every act of restricting an individual's human rights is determined by law.[6]

Jimmy Asshiddiqie stated that the establishment of a state, as well as the administration of a state, should not reduce the meaning of human rights freedom; it is a very important pillar in every country referred to as the state of law.[7] Human Rights are rights that human beings have naturally without exception and privileges for certain groups, groups, or social levels.[8] If we analyze the Provincial Regulation of DKI Jakarta No. 2 of 2020 on Corona Virus Disease Prevention 2019, the Government is not giving the human rights freedom for the citizen to choose health facilities.

Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights: "every limitation of personal freedoms," states the document, "should be discussed and applied by law, and not in an arbitrary manner." From a normative standpoint, the Siracusa Principles offer some guidance in whether and how it is justifiable to impose limitations on personal freedoms to protect and promote public health.[9]

**Bagir Manan** states that the element of compulsive disorder must show 2 (two) common characteristics, among others: (i) there is a crisis, and (ii) there is urgency. According to him, it is a crisis when there is a disturbance that causes concern and is sudden. Urgency, if various circumstances are not taken into account in advance and demand an immediate action without

waiting for prior consultation or there are signs of a real beginning and logical reason if not regulated disruption immediately to both the community and the way the Government.[10] So that, limitation of human rights only by an act, not a local regulation such as Provincial Regulation of DKI Jakarta No. 2 of 2020 on Corona Virus Disease Prevention 2019, there is a criminalization, there is a sanction for vaccine objector there.

Pan Mohammad Faiz expressed the jurisprudence on mandatory human rights restrictions in the format of the law, not a regional regulation as in the Provincial Regulation of DKI Jakarta No. 2 of 2020 on Corona Virus Disease Prevention 2019, stating Article 73 of the Human Rights Law also contains provisions on restrictions on human rights as follows, "The rights and freedoms stipulated in this law can only be limited by and based on the law, solely to ensure recognition and respect for human rights and the basic freedoms of others, decency, public order, and the interests of the nation." In addition, the Court's decision that we can make a reference to restrictions on human rights in Indonesia is Decision No. 065/PUU-II/2004 concerning testing against the application of applicable legal provisions retroactively in Law No. 26 of 2000 concerning The Court of Human Rights filed by Applicant Abilio Jose Osorio Soares As understood, in Article 28I paragraph (1) of the 1945 Constitution, there are several rights that are formulated as "irrevocable rights under any circumstances," including the right to life and the right not to be prosecuted under retroactive law. In this context, the Court interprets that Article 28I paragraph (1) shall be read together with Article 28J paragraph (2) so that the right not to be prosecuted under retroactive law is not absolute. Therefore, the rights stipulated in Article 28I paragraph (1) of the 1945 Constitution, which is included in the formulation of "irrevocable rights under any circumstances," may be limited, then prima facie various provisions of human rights outside of the article, such as freedom of religion (Article 28E), the right to communicate (Article 28F), or the right to property (Article 28G) can certainly also be limited, with a note as long as it is in accordance with the restrictions set by the law.[19] From that jurisprudence, we can compare with the case of limitation of human rights by Provincial Regulation of DKI Jakarta No. 2 of 2020 on Corona Virus Disease Prevention 2019, because the right to choose health facilities, especially when the Government wants to sanction vaccine objectors, it can not be done by local regulation.

The Siracusa Principles stipulates that restrictions, limitations, derogation, including the right to choose health insurance, must be regulated in law. According to the authors, if the restriction

of human rights cannot be regulated in the form of legislation, then at least, in an emergency must be regulated in the form of government regulation in lieu of law so that it can be the legal basis for the rules under it, including local regulations (if it contains sanctions), so that the regulation of human rights restrictions in the form of local regulations without any higher rules governing it, contrary to the principles of Siracusa. Thus, restrictions on human rights in the type of legislation applicable in Indonesia cannot be regulated in the form of Government Regulations, Presidential Regulations, Presidential Decrees, or Regional Regulations.

## **2. Application of Siracusa Principles in Legislation**

COVID-19 can become a deadly disease without prevention and treatment methods. Given this situation, the question is not if but how countries can restrict rights to try to control the epidemic. The Siracusa Principles are the basis on which to build. The principles define the limits of rights that may apply during an emergency. Under Siracusa, restrictions are justified only when they support a legitimate purpose; the format in the form of a statute is indispensable, proportional, limited in duration. State measures must also be evidence-based, not arbitrary or discriminatory. However, because these principles are intended to be broadly applied to all public emergencies, it is difficult to activate them in a public health crisis.[11]

If a particular restriction is deemed necessary under the International Treaty on Civil and Political Rights (ICCPR), it must be met with the following criteria: (1) It must be based on one of the reasons for justifying the rights of the people (i.e., Public Health); (2) it must respond to pressing public or social needs; (3) must be proportionate and must enforce the law (4) In this judgment, the proportional criteria lie in the test of the balance between legitimate social purposes and limitations of rights. More specifically, proportional criteria include "equations that determine the importance of social objectives, the importance of guaranteed rights. Considering the model of restrictions, the Universal Declaration of Human Rights (UDHR) states that in exercising rights and freedoms, individuals must submit only to those established by law due to violations of the law and respect for Human Rights. The rights and freedoms of others and meet the requirements of justice, morality, public order, and public interest in a democratic society. Gradually, these requirements are expanded to include public health as well. As such, the formal guidelines of the Siracusa Principles on the delegation of the International Provisions on civil and political rights (Siracusa Principles) include public health as a valid basis for restricting certain rights. Public health can be called

as a basis for allowing the state to take measures that address serious health threats to residents or members of the population. However, these measures should be aimed specifically at preventing illness, injury, or providing care for the sick and injured. The Siracusa Principles state that a threat to a nation's life must be an extraordinary state or a danger that: (1) affects the entire population and all or part of the territory of the country; and (2) threaten the physical integrity of the population, political independence or territorial integrity of the state. It is important to emphasize that if it is assumed a public health emergency of this magnitude, it can be called as the basis for the reduction of human rights.[12]

Basically, every human right must be protected, fulfilled, and enforced by the state. However, in its development, not all rights must be fulfilled absolutely, some rights can be limited in fulfillment, and there are rights that cannot be limited even in an emergency. The rights that may be restricted in an emergency are the so-called derogable rights, which consist of the right to express an opinion, the right to move, the right to assembly, and the right to speak. But what should be of concern is that even if the state in any circumstances there is a right that cannot be limited in all circumstances, it is called non-derogable rights (absolute rights that cannot be reduced by the states of parties, even in an emergency) which in principle include the right to life, freedom from acts of torture, free from inhumane acts and degrading dignity, freedom from slavery and servitude, freedom from retroactive laws, and freedom of thought, conscience, and religion. The human rights that the author mentioned above are called the essential (core) human rights, meaning that they are the main human rights that should always be maintained. Hans-Ernst Folz, in his book, *A State of Emergency and Emergency Legislation (Staatsnotstand und Notstandsrecht)*, published in Germany in 1961, proposes a more complicated list of reasons that allow the enactment of emergencies should include: 1. The presence of external hazards that threaten the state (acts of danger from the military or military invasion, or the coordination of domestic subversive activities of the territory of a foreign country 2. The existence of domestic riots of different types, rebellions, riots, and rebellions, "constitutional imperatives" caused by the disruption of the normal functioning of the constitutional organs or conflicts (in the federal state) between the center and the subject of the federation; 3. Disruption of the normal functioning of government authorities caused by strikes in the civil service; 4. Refusal to pay taxes (tax strike); 5. Economic and financial difficulties, and 6. labor unrest and national disaster. Human rights restrictions can only be done if they meet the following conditions: a. Prescribed by Law; b. in a

democratic society; c. Public Order (ordre public); d. Public Health (to protect public health); e. Public Morals (to protect public morals); f. National Security (to protect national security); g. Public Safety (to protect public safety); and h. Rights and freedoms of others or the reputations of others. Efforts to restrict human rights that are classified as non-derogable rights is a form of violation of human rights; this is what the author thinks is contrary to the obligations of the state where the state must respect (to respect), protect (to protect), and fulfill (to fulfill) human rights. Manfred Nowak states that human rights cannot be considered absolute, but only have relative validity, or that in Jimly Asshiddiqie language is referred to as absolute human beings that the absolute nature is valid as long as the formulation of the Constitution itself, which is the product of the highest social contract, is not changed at any time. That is, the absolute binding nature of the constitutional legal norms of the highest law remains relative, but as the highest basic legal norm, the provisions of the Constitution that determine the absolute nature of the rights, referred to as the non-derogable right or human rights that cannot be reduced under any circumstances, must still be recognized. The state of emergency refers to the principle of legality, the purpose of this principle of legality is a conformity of the declaration of an emergency with the act of emergency action taken by a head of State (President, King or Queen), by the laws of a country, this principle of legality is intended to ensure that the laws of a country are by international law. Emergency measures taken within a country must remain within a corridor or legal framework. Carl Schmitt's opinion on this state of emergency is based on decisions taken by the ruler, the ruler here can be translated as head of state (president/king/queen), who has the authority to officially declare to the public that the state is in a state of emergency. Carl Schmitt's opinion also emphasizes that emergencies do not apply continuously but only temporarily; if the state has become normal again, then the status of the emergency will be canceled, back to normal conditions. The necessary actions must be based on the principle of proportionality (reasonable) or appropriate, meaning that the action must not exceed the reasonableness that is the basis of justification for the conduct of the act itself in order to defend itself (self-defense) from threats that endanger the life of the nation. The declaration of the enactment of this emergency must conform to the intensity of threats that can endanger people's lives or the survival of the nation and state, the integrity of the region, as well as national unity and its implementation, is regulated by law. In these circumstances, it is possible to place human rights restrictions in whatever form the purpose is to protect citizens and the integrity of the country

from the threat of danger. However, human rights that are classified as non-derogable rights as stipulated by Article 4 (2) of the ICCPR and Article 28I of the 1945 Constitution should not be limited in fulfillment. Once an emergency has been officially declared, it shall be stipulated in a certain form of law, namely in the form of a Presidential Decree (Presidential Decree) or in the form of government regulation in lieu of law. The next step, according to Jimly Asshiddiqie, is as follows (Jimly Asshiddiqie) : (a) Open declaration or proclamation; (b) Publication or invitation in the state gazette; and (c) Dissemination of the manuscript of the declaration to the relevant parties, either according to the provisions of national law or according to the provisions of international law.[13]

If analyzing the arrangements in the Siracusa Principles, as a document of the United Nations adhered to by various countries of the world in the international association. Public health provision in the Siracusa Principles stipulates that, in an emergency, then restrictions are 'determined by law.' The relationship between the right to choose health insurance and human rights is set out in several relevant points in the Siracusa Principles, as reflected in the points:

- I. Limitation
  - A. General Interpretative Principles Relating to the Justification of Limitations
  - B. Interpretative Principles Relating to Specific Limitation Clauses
    - i. "prescribed by law;"
    - ii. "in a democratic society;"
    - iii. "public order (ordre public);"
    - iv. "public health;"
    - v. "public morals;"
    - vi. "national security;"
    - vii. "public safety;"
    - viii. "rights and freedoms of others," or "rights and reputations of others;"
    - ix. "restrictions on public trial."
- II. Derogations in a Public Emergency
  - A. "Public Emergency Which Threatens the Life of the Nation"
  - B. Proclamation, Notification, and Termination of a Public Emergency
  - C. "Strictly Required by the Exigencies of the Situation"
  - D. Non-Derogable Rights
  - E. Some General Principles on the Introduction and Application of a Public Emergency and Consequent Derogation Measures
  - F. Recommendations Concerning the Functions and Duties of the Human Rights Committee and United Nations Bodies

Explanation about point B in Siracusa Principles "prescribed by law" No limitation on the exercise of human rights shall be made unless

provided for by national law of general application which is consistent with the Covenant and is in force at the time the limitation is applied.

About Public Health in Siracusa Principles, iv. "public health" 25. Public health may be invoked as a ground for limiting certain rights to allow a state to take measures dealing with a serious threat to the health of the population or individual members of the population. These measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured. 26. Due regard shall be had to the international health regulations of the World Health Organization.

The proclamation of a public emergency is made in good faith based on an objective assessment of the situation to determine the extent to which, if any, it is a threat to the life of the nation. The proclamation of a public emergency and consequently the delegation of the obligations of the Treaty, which is not made in good faith, is a violation of international law. Some things about emergencies stipulated in Siracusa Principles are Point 58. No state party shall, even in time of emergency threatening the life of the nation, derogate from the Covenant's guarantees of the right to life; freedom from torture, cruel, inhuman or degrading treatment or punishment, and from medical or scientific experimentation without free consent; freedom from slavery or involuntary servitude; the right not be imprisoned for contractual debt; the right not to be convicted or sentenced to a heavier penalty by virtue of retroactive criminal legislation; the right to recognition as a person before the law; and freedom of thought, conscience, and religion. These rights are not derogable under any conditions, even for the asserted purpose of preserving the life of the nation. Point 62. A proclamation of a public emergency shall be made in good faith based upon an objective assessment of the situation in order to determine to what extent, if any, it poses a threat to the life of the nation. A proclamation of a public emergency, and consequent derogations from Covenant obligations, that are not made in good faith are violations of international law.

Point 66. A bonafide proclamation of the public emergency permits derogation from specified obligations in the Covenant but does not authorize a general departure from international obligations. The Covenant in Articles 4(1) and 5(2) expressly prohibits derogations that are inconsistent with other obligations under international law. In this regard, particular notes should be taken of international obligations which apply in a public emergency under the Geneva and ILO Conventions.

As one of the instruments of international law, ICCPR is also in line with the Siracusa Principles, that the limitation, delegation, or limitation of human rights, must be in the form of legislation. This is as stated in several Articles in the ICCPR, as follows:

Article 12.3 ICCPR The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals, or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

Article 19.3b ICCPR For the protection of national security or of public order (*ordre public*), or of public health or morals

Article 21 ICCPR The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law, and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22.2 ICCPR No restrictions may be placed on the exercise of this right other than those which are prescribed by law, and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health, or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.[14]

According to A. Hamid S. Attamimi that the content of the law should be if strictly ordered by the Constitution and TAP MPR, further regulates the provisions of the Constitution, which regulates the rights (human rights), which regulates the rights and obligations of citizens, which regulates the division of state power, which regulates the main organization of the highest institutions / high states, which regulates the division of territory/regions of the state, which governs who citizens and how to obtain/lose citizenship, which is stated by a law to be regulated by law. Furthermore, Bagir Manan argues that one of the reasons the law was established when it comes to matters relating to basic rights or human rights.[15]

Philosophically and juridically, the Siracusa Principles are recognized in the *ius constitutum* in Indonesia, in addition to Article 28J paragraph (2) of the Constitution of the Republic of Indonesia 1945. There are regulations governing the limitation of human rights must be in the format

of the law, as a concrete form of application of Siracusa Principles in the legislation in Indonesia such as Article 73 of the Human Rights Law, although the principles and regulations in some legislations are ignored, have been organized philosophically and juridically, but are harmed sociologically, or their application.

### **3. Legal Analysis on Restrictions on The Right to Refuse Vaccination in Local Regulation No. 2 of 2020 on The Prevention of Corona Virus Disease 2019**

Through the relationship between public health and human rights, it is accepted in the Health Policy that exposure to ill health as a society can be better reduced by taking steps to respect individual rights, protect and fulfill. This acceptance was endorsed as part of the United Nations Siracusa Principles, which state that while certain restrictions on rights are permitted for a variety of reasons, including serious threats to public health, they should be specifically regulated in law, should not be arbitrary or unreasonable, must be clear and accessible to all, reviewed and remedy (Principles-15 and 25, Siracusa Principles, United Nations 1984). The Siracusa Principles also state that if a restriction is determined to be "necessary," it must be (a) "Based on one of the reasons for justifying the restriction recognized in the relevant article, (B) responding to an observed public or social need, (C) pursuing a legitimate goal, and (D) proportional to it. There are limits also not to be discriminated against. The report on the special relationship on extreme poverty and Human Rights, UN Doc. Document a / 66/265 focuses on the criminalization of poverty and includes a discussion of legal restrictions on human rights. The report from the Rapporteur specifically on human rights to water and sanitation, a mission to the United States, ethical and legal standards for human rights, has developed a recognition that, despite goodwill, researchers and practitioners may prefer a perceived need from their studies or program about their needs, or perhaps importance for potential benefits. [16]

The idea of a legal state demands that the administration of State and Government should be based on the law and provide guarantees on the basic rights of the people contained in the law. According to Sjachran Basah, the principle of legality means efforts to realize an integral duet harmoniously between understanding the sovereignty of the law and understanding the sovereignty of the people based on mono-dualistic principles as pillars of a constitutive nature. Philip Alston has little concern about restrictions on human rights and has set restrictions on several rights. The concept of restrictions by the state is

called Margin Of Appreciation aims to respect, protect and fulfill human rights.[17]

The Government's obligation to fulfill the right to health as a human right has an international juridical basis in Article 2 paragraph (1) of the Convention on Economic, Social, and Cultural Rights. Article 28 I paragraph (4) of the 1945 Constitution states that the protection, promotion, enforcement, and fulfillment of human rights is the responsibility of the state, especially the Government. This Government's obligation is also affirmed in Article 8 of the Human Rights Law.[18]

Supposedly, human rights must be respected, as stipulated in Article 28J paragraph (1) of the Constitution of the Republic of Indonesia year 1945 stipulates that "Everyone must respect the human rights of others in the order of public life, nation, and state."

The inclusion of articles on human rights as a *constitutional guarantee (constitutional guarantee)* still holds a lot of debate among academics and human rights practitioners. The focus of the problem occurs in two articles that, when read, simply have a conflicting understanding, namely the provisions on non-derogable rights (Article 28I) and provisions on human rights limitation (Article 28J). In the same case, the Court judged that if we look at the history of the development of Indonesian constitutionalism, as reflected in the constitutions that have been in force, namely the 1945 Constitution before the Amendment, the RIS Constitution 1949, the 1950 Constitution, and the 1945 Constitution after the Amendment, there appears to be a tendency not to enforce human rights, in the sense that in certain matters, at the behest of the Constitution, human rights can be limited by law.[19]

In addition to the Siracusa Principles, ICCPR, NRI Constitution of 1945, Article 73 of Law No. 39 of 1999 on Human Rights (Human Rights Law) also contains provisions on restrictions on human rights must be by law with the following article, "The rights and freedoms stipulated in this law can only be limited by and under the law, solely to ensure recognition and respect for human rights and the basic freedoms of others, decency, public order, and the interests of the nation."

Controversial presence of Provincial Regulation of DKI Jakarta No. 2 of 2020 on Corona Virus Disease Prevention 2019. Article 5, letter f Provincial Regulation of DKI Jakarta No. 2 of 2020 on Corona Virus Disease Prevention 2019 stipulates that it "assists the central government in distributing vaccines to the public." Furthermore, the criminal sanction of fines is stipulated in Article 30 Provincial Regulation of DKI Jakarta No. 2 of

2020 on Corona Virus Disease Prevention 2019 stipulates that "Any person who intentionally refuses to be treated and/or vaccinated for COVID-19, shall be penalized with a maximum fine of Rp5,000,000.00 (five million rupiahs)." Unfortunately, in addition to the format of human rights restriction rules through local regulations, the legal substance of this regional regulation also regulates criminal sanctions fines for everyone in the DKI Jakarta province who refuses to be treated and/or vaccinated for COVID-19.

Coercion of vaccination with criminal threats is a violation of human rights.[20] What's more, the arrangement is only in the form of local regulations, not laws. Because, referring to the Siracusa Principles and its application adopted in several regulations in Indonesia, clearly and unequivocally stipulates that the restriction of human rights is only in the form of legislation. Thus, the substance of local regulation should not regulate such things.

Similarly, there is an arrangement between the Siracusa Principles, ICCPR to its application in the legislation in Indonesia, relating to the right to choose public health insurance, so that the arrangement must be regulated in the form of legislation, not in the form of local regulations. Moreover, the regional regulations have a legal substance that is indicated to 'violate human rights because it regulates criminal sanctions fines for those who do not want to be vaccinated.' In fact, the Government should be a protector of human rights by respecting the human rights of its citizens, one of which is by not imposing vaccinations, and it is necessary to view it as a 'right to choose health insurance.

#### 4. CONCLUSION

Criminalization of vaccination objectors in the Provincial Regulation of the Special Region of the Capital City of Jakarta Number 2 of 2020 concerning the Prevention of Corona Virus Disease 2019. Formulation restrictions on human rights in the form of local regulations that also regulate sanctions for people who refuse vaccination are essentially contrary to the instruments of international law (Siracusa Principles and ICCPR), as well as national legal instruments (Article 28J of the Constitution of the Republic of Indonesia year 1945, and Article 73 of the Human Rights Law). As such, the Existence of Provincial Regulation of DKI Jakarta No. 2 of 2020 on Corona Virus Disease Prevention 2019, which also regulates criminal sanctions against vaccination refusals, should be classified as the 'right to choose health insurance.' Supposedly, the local Government, as an extension of the central Government, also protects human rights in providing the rights of health facilities, not treat it as an obligation because

human rights should only be limited by law, not other types of legislation, local regulations, for example.

More specifically, regarding vaccine objectors in the Provincial Regulation of DKI Jakarta No. 2 of 2020 on Corona Virus Disease Prevention 2019, they are sanctioned in the form of a criminal fine of 10 million rupiahs, so that the criminalization is contrary to Article 73 of the Human Rights Law that restrictions on human rights only with the law, where the regulation is in line with the Siracusa Principles.

#### AUTHORS' CONTRIBUTIONS

The author's contributions are to jointly discuss the topic of the title, gather materials, and work on this research to the end.

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