

# Mandatory COVID-19 Vaccination Program in Indonesia Under International Human Rights Law: A Legitimate Limitation?

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## ABSTRACT

The Indonesian government has initiated a mandatory national vaccination program to create herd immunity by enacting Presidential Regulation Number 99 of 2020 which was amended by Presidential Regulation Number 14 of 2021. These regulations limit the right to reject vaccinations, which falls within the scope of the right to conscientious objection derived from Article 18 of the International Covenant on Civil and Political Rights. Pertinent to the growing vaccine hesitancy phenomenon, the legitimacy of this limitation shall be scrutinized through the perspective of international human rights law (“IHRL”) that binds Indonesia. Addressing the said issue, this doctrinal research paper utilizes juridical-normative research methods with conceptual and case approaches. In conclusion, IHRL permits States to limit human rights so long as the said limitation is prescribed by law, necessary in a democratic society, and proportionate to achieve the legitimate aim. Departing from these requirements, mandatory COVID-19 vaccination in Indonesia is justifiable as it fulfills these required elements. First, as IHRL does not require the limitation to be regulated in an Act, this limitation has been ‘prescribed by the law’ as it is regulated under the Presidential Regulation in a clear, accessible, and predictable manner. Second, this mandatory vaccination is ‘necessary in a democratic society’ as there exist factual pressing social needs, and this measure is to pursue a legitimate aim, namely public health. This program is also ‘proportionate’ to strike a balance between the competing public and private interests to achieve herd immunity.

**Keywords:** COVID-19, mandatory vaccination, international human rights law, human rights limitation.

## 1. INTRODUCTION

The novelty of the SARS-CoV-2 (hereinafter, “COVID-19”) pandemic has contributed to the proliferation of the government action worldwide in tackling a threat to public health, such as: implementing COVID-19 testing, tracking, and treatment measures; broadening vaccination coverage; and imposing quarantine obligations along with travel restrictions [1]. In this matter, a legal doctrine under international law prescribes that every State has its own discretion to regulate and implement its law pursuant to its needs autonomously [2]. In Indonesia, the government has categorized the COVID-19 pandemic as a national non-natural disaster on 13 April 2020 through Presidential Decree Number 12 of 2020 and enacted regulations accordingly to respond to this situation. However, the first peak of the COVID-19 infection curve in Indonesia eventually happened in January and February 2021 [3]. To flatten the infection curve and to further prevent the

subsequent wave of infection, the government focuses on procuring COVID-19 vaccination. This is in accordance with the responsibility of the Indonesian government to respect, protect, and fulfill the right to health owned by its nationals under international law [4].

The COVID-19 vaccination to a certain extent indeed has a vital role to end the pandemic because it is able to create herd immunity so long as at least 67% of the population are vaccinated [5]. Therefore, the Indonesian government initiated a mandatory national COVID-19 vaccination program by enacting Presidential Regulation Number 99 of 2020 which was then amended by Presidential Regulation Number 14 of 2021 (hereinafter, “Presidential Regulation concerning COVID-19 Vaccination”). Article 13A of the said regulation states that every person who has been designated as a recipient of the COVID-19 vaccines shall be vaccinated. If one refuses to be vaccinated, one will be given administrative sanctions. These sanctions are in the form of postponement or

termination of public insurance or the supply of government relief, postponement or termination of public administrative service, and/or fines. Furthermore, criminal sanctions may also be imposed on those who refuse and cause obstruction under Article 13B of Presidential Regulation concerning COVID-19 Vaccination in line with Law Number 4 of 1984 concerning Infectious Disease Outbreaks.

This mandatory nature of vaccination runs contrary to the existence of fears and doubts in Indonesian society towards COVID-19 vaccines [6]. A survey conducted by *Indikator Politik Indonesia* shows that 41% of its respondents are not willing to be vaccinated [7]. People's tendency to refuse and hesitate to be vaccinated is due to various reasons, one of them is because of the novelty of COVID-19 vaccines along with their uncertain safety and possible side effects [8]. Some people also are of the view that this mandatory vaccination runs against citizens' freedom and civil liberties as every person should have freedom in their lives in general. Meanwhile in this COVID-19 vaccination program, if one has been designated to receive the COVID-19 vaccine by the government, then one is restricted to refuse the vaccine although one hesitates or fears to be vaccinated.

In this sense, the government is prone to interfere with the enjoyment of human rights in a way that results in an arbitrary manner, waiving away the objective of the measures in protecting the public health *vis-a-vis* the COVID-19 pandemic. In Indonesia, the obligatory nature of vaccination with the imposition of fines and restriction of government relief is a thought-provoking legal issue based on human rights perspectives. Consequently, the issue arises whether mandatory COVID-19 vaccination program infringes human rights.

This paper discusses the legitimacy of the mandatory COVID-19 vaccination program in Indonesia with the perspective of international human rights law by dividing the discussion into 3 (three) parts. The first part of this paper focuses on the category of human rights that recognizes our freedom to refuse vaccination; the second part discusses the authority of the government to limit human rights in general; the third part addresses the requirements to limit human rights in international law while assessing the mandatory COVID-19 vaccination program in Indonesia. It is noteworthy that international human rights law, particularly International Covenant on the Civil and Political Rights (hereinafter, "ICCPR"), along with its legal instruments as the relevant sources, are the legal framework that binds the Indonesian government as Indonesia has ratified ICCPR through Law Number 12 of 2005 concerning ICCPR Ratification.

## 2. RESEARCH METHOD

This paper analyzes the topic of human rights limitation through the prism of international law and applies juridical-normative research methods. This research is categorized as doctrinal research, which is a typology that explains the governing legal rules systematically, linking up the relationship with a particular legal category and address three main areas of difficulty; conflict of the norm; legal vacuum; vagueness; and predicts future development [9]. This methodology focuses on the currently applicable law [10] and is carried out by literature approaches that rely on secondary data such as in the form of statutory regulations, academic writings, domestic, and international court decisions [11]. In order to further conceptualizing the issue at hand, the research methodology encompasses [12]:

- 1) Conceptual approach asserting the analysis of the emerging principles and legal doctrines [12] being introduced by experienced scholars and practitioners in the context of international human rights law. Through this approach, this paper aims to draw the line between the applicable principles of human rights limitation and overseeing the effective application in the mandatory COVID-19 vaccination program;
- 2) Case approach delving into the *ratio decidendi* of the existing international jurisprudence [12]. Article 38 paragraph (1) of the Statute of International Court of Justice stipulates judicial decisions as a relevant source of international law [13]. Especially for the issue at hand, this paper makes references to the cases of the Human Rights Committee, as the interpretative body of the ICCPR, and the European Court of Human Rights (hereinafter, "ECtHR") which deals with the application of a regional instrument for the protection of human rights [14]. Both legal instruments maintain a similar clause governing human rights limitations, thus it serves a great weight to assist the finding on progressive interpretation regarding the mandatory COVID-19 vaccination program and its alignment with the human rights concern in Indonesia. For instance, the ruling of the ECtHR in the case of *Vavřička and others v. the Czech Republic*, which was decided in a timely manner in early 2021 is of paramount importance. Although the case did not have a binding effect on the Indonesian government, it nonetheless addressed the current concern to legitimize vaccination programs with similar legal principles pertaining to human rights limitations that will be elaborated *infra*.

### 3. FINDINGS AND DISCUSSION

#### ***3.1. The Rights to Refuse Vaccination Falls within the Ambit of the Rights to Conscientious Objection***

International law divided human rights into two spectrums: the civil and political rights on one hand, and the rights to the economic, social, and cultural rights on the other [15]. As part of Indonesia's international human rights obligations arising from the ICCPR, the right of refusal to be vaccinated has been questioned by many, under which 'box' it should be categorized. It may be seen to fall under the rights to health at first glance, however, if one looks more closely the nature is distinct. The rights to health involved an active contribution for the State in order to be fulfilled [4]. Whereas, the rights of individuals to refuse vaccination are perceived as the freedom that requires States to refrain from any interference, which implies the negative obligation for State [15]. This freedom of refusal manifested from personal conviction, by looking at the vaccine hesitancy phenomenon, the skepticism towards COVID-19 vaccination arose from conscience-based refusals, in the form of religious beliefs and medical safety which commonly refers as the "complacency, confidence, and convenience" model [16].

Under Article 18 of the ICCPR, everyone has the freedom of religion, freedom of thought, and the freedom of conscience [17]. The right to conscientious objection has been categorized as the derivative right under Article 18 ICCPR, albeit not explicitly mentioned, it is best defined as the right to raise any objection based on religion, thought or conscience towards any particular matters. For instance, in the case of *Atasoy v. Turkey* [18] concerning the refusal to perform military services, which states that the employment of weapons as a lethal force to maintain public safety is prohibited and contrary to his religious principle. Another one, in the case of *Singh v. France* [19], concerning the refusal to comply with the prohibition to wear any symbols which perform religious affiliation in public school. The violation of Article 18 of the ICCPR has been found in those cases which impose a mandatory obligation for the Applicant by State. The Human Rights Committee conceptualized the right of conscientious objection as to the right that could go beyond the religious beliefs concerns [20] and encompasses freedom of thought in any form [21]. Therefore, we can draw a connecting line that the refusal of individuals for COVID-19 vaccination under freedom of health matters, can fall into this 'box', namely rights to conscientious objection under Article 18 of the ICCPR.

Due to the varied nature of conscience and thoughts of each individual, some of them might be found unreasonable or incorrect. In general medical activities, health care professionals may have to act

'against' the patient's conscientious objection [22], instead of legitimizing every conscientious concern. For instance, health workers have to correct logical fallacies from patients by distinguishing between genuine biased-conscience-based and scientific-consensus-based objections supported by scientific data. Concretely as an example, hoax news regarding several scientific information is spread in our society that can lead to public fallacies and incorrect tendencies. This infers that educating the vaccine-hesitant is of paramount importance in exercising the rights to conscientious objection along with optimizing the objective of mandatory COVID-19 vaccination duty.

#### ***3.2. Concept of Limitation in International Human Rights Law***

Human rights have emerged and become a matter of international concern since the twentieth century that triggers an obligation for States, State agents, non-State actors, and among individuals to protect human dignity. Contemporary conceptions of human rights affirm the idea that human rights are inherent, inalienable, and inviolable [23], by the virtue that these rights belong to all human beings even before they play a role in society. However, it is important not to overlook that despite the nature of human rights, some of them are not absolute and still subject to certain restrictions. Inherent with democratic governance, States' obligations are threefold: to protect, to respect, and to fulfill the needs of their citizens [16]. To perceive those objectives, States are permitted to hold some restrictions [24] which are commonly known as to limit and to derogate human rights. Both concepts have heavily presumed to adversely impact the rights enjoyed by every individual.

A clear distinction between derogation and limitation relies on the degree of severity at the end result of those restrictions [25]. The former demonstrates a narrow and stringent approach whereas the latter serves a broader and less restrictive approach. Derogation usually negates the essential element of rights in question by the State waiving their international obligations. This rule can occur only if, in the guise of justice, there exists an exceptional circumstance when the life of a nation is threatened [26] to warrant derogation is justified such as due to war, a terrorist emergency, or a severe natural disaster [26]. As the legal maxim says *onus probandi actori incumbit*, the derogating State shall bear the burden of proof for the existence of such exigencies [27]. Article 4 of the ICCPR is an in-built guarantee against abuse by the State that listed an exhaustive list of certain rights that cannot be derogated from, regardless of the reasons for which the derogations are made. The range of non-derogable rights includes rights to life, prohibition of torture

[27], freedom from slavery, freedom of consciousness, religion, and thought [22].

Limitation to human rights is to be understood as limiting a certain degree—not wholly—of the rights of individuals to undergo and exercising those rights without impairing the essence of it [28]. One can deduce that there are requirements of limitation set forth by the judgments of Human Rights Courts, decisions of Human Rights Committee as the interpretative body of the ICCPR [14], and the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights as the soft law which stipulates clauses on limitation and derogation of rights. Those 3 (three) main elements of limitation are: i) prescribed by law, ii) necessary, and iii) proportionate. The first element required the State to delineate limitation measures based on the accessible law to prevent abuse of discretion and to ensure certainty in its implementation [14]. Turning to the second element, necessity is a notion in determining the permissible reasoning of limitation [15] that usually relates to the pursuance of legitimate aims. Certain expressed limitation clauses within some ICCPR rights pursuant to the Siracusa Principles, are designed to achieve legitimate ends, such as public order, public safety, national security, and protection of the rights of others. The last element is proportionality that incorporates two aforementioned elements, meant to perpetually balance and reconcile the countervailing interest [15].

### ***3.3. The Fulfillment of Human Rights Limitation Requirements in the Indonesian Mandatory COVID-19 Vaccination***

Similar to other human rights, limitations on the freedom of thought and conscience are permitted if it is prescribed by law and necessary to protect, among others, public health or others' fundamental rights in a democratic society [18]. Such limitations also must have direct relation and proportionate to the purpose on which they are predicated [22]. The applications and further interpretations of these requirements are evident and worked out on a case-by-case basis. Considering case law that has identical circumstances is rare, the *ratio decidendi* in each case shall be given great weight.

#### ***3.3.1. The Limitation Must be Prescribed by Law***

The phrase 'prescribed by law' means that the limitation must be based on a domestic law that is adequately accessible to the society and precise enough to avoid ambiguity [28]. This infers that the mere existence of a law governing the human rights limitation would not automatically imply compliance

to this requirement, rather, the quality of the relevant law must be assessed scrupulously. Through the comprehensible law, civilians and law enforcers would be able to foresee the consequences which action in question may entail. Nonetheless, those consequences do not have to be absolutely foreseen. In the law-making processes, the international human rights law permits the wording of the law at issue to be vague to some extent and interpreted subsequently in practice to prevent excessive rigidity [2]. As such, in the implementation of the said law, the law enforcers may make discretions, but not arbitrary ones. For example, the law enforcers may determine the unregulated amount of fines for a violation of the relevant law [29], and also decide the grounds or reasons for refusing a proposal of permissions [29]. To provide legal protection, the national law governing human rights limitation shall also have a mechanism that is effectively able to protect its citizens from possible arbitrary interferences by State authorities [30].

In the Presidential Regulation concerning COVID-19 Vaccination, the wordings are adequately clear as it states that every person who has been targeted by the Indonesian Ministry of Health shall receive COVID-19 vaccines. According to Article 13A (1) of the said regulation, the Ministry of Health will make a database and determine who will be categorized as targeted persons. People who have been notified by the Ministry of Health, through Short Message Service or PeduliLindungi Application [30], have to comply with such instructions. However, those who do not fulfill the criteria to be vaccinated will be exempted from this provision as regulated in Article 13A (3) of Presidential Regulation concerning COVID-19 Vaccination. The criteria to be vaccinated are further explained in the Decision of the General Director of Disease Prevention and Response of Ministry of Health Number HK.02.02/4/1/2021 (hereinafter, "Decision of Ministry of Health 2021"), which exempts people with heavy comorbid, high blood pressures, and/or having been infected by COVID-19 from this mandatory vaccination. In addition, Article 21 of Presidential Regulation concerning COVID-19 Vaccines governs the duties of each public authority and expressly states that public prosecutors along with other agencies will concurrently support and supervise this implementation.

It is notable that at the national law level, Article 28J (2) of the Indonesian Constitution 1945 (*Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*) requires limitations to the implementation of human rights to be governed only by an Act (*Undang-Undang*), meaning that Presidential Regulations shall not contain provisions limiting human rights without any authorization from an Act. In other words, this provision infers that the limitations to human rights can only be imposed if it is approved by the Indonesian People's Representative Council (*Dewan*

*Perwakilan Rakyat*) [31]. This is reasonable as the People's Representative Council is a public institution representing civilians and its members are elected directly by the citizens, hence, holding the sovereignty of the people. In this regard, despite the existence of Law Number 4 of 1984 concerning Outbreaks of Infectious Disease and Law Number 6 of 2018 concerning Health Quarantine that order people to abide by any regulations made by the government, Presidential Regulation concerning COVID-19 Vaccination indeed does not refer to these Acts.

Nevertheless, under international human rights law, the term 'law' in this element is not restricted exclusively to only cover Act as the primary legislation because the term 'prescribed by law' shall be understood in its substantive sense, and not in its formal sense [32]. Even such provisions by law may include unwritten law as long as the rules are sufficiently certain and unambiguous [1]. Therefore, although this human rights limitation is governed in a Presidential Regulation—as a legal instrument of lesser rank—instead of an Act, this does not render the Indonesian mandatory COVID-19 vaccination program violating international human rights law.

Additionally, the making of Presidential Regulation concerning COVID-19 Vaccination has followed the required due process of lawmaking. Article 1 paragraph 6 of Law Number 12 of 2011 concerning the Legislation Making along with Article 4 (1) of the Indonesian Constitution 1945 empower the President to make Presidential Regulations as to exercise executive or governmental power. This power covers the authority to handle affairs falling outside of the legislative and judicial power [33], which thus includes the power to obligate vaccinations to protect public health. The compliance of Presidential Regulation concerning COVID-19 Vaccination to this framework is, among others, by looking at the existence of the President's signature and its inclusion to the State's gazette.

As a matter of legal protection and certainty, this Presidential Regulation, like other lesser ranked regulations, can also be subjected for review by the Supreme Court to assess its conformity with relevant Acts. This is considering that in the situation concerning the application of COVID-19 vaccination in Indonesia, the essence of the Presidential Regulation concerning COVID-19 Vaccination may appear open to doubt. Article 24A (1) of the Indonesian Constitution 1945 provides an entitlement of Indonesian nationals to seek judicial review to the Supreme Court whenever it is deemed as necessary. The authority to evaluate and invalidate legislation under the Acts—such as Presidential Regulations, Government Regulations, and Municipal Law—, which violate the basic features crystallized in the existing Acts, has vested upon the Supreme Court. This resonates with the fact that in the absence of the People's Representative Council's signature by way of

the existence of Presidential Regulation, this does not *per se* undermine the democratic function of its nationals to criticize the content of such legal products.

### 3.3.2. *The Limitation Must be Necessary in a Democratic Society*

Relying on the interpretation of human rights courts and international legal doctrine, in analyzing limitations of the rights of conscientious objection, it should fulfill the elements of "necessary in a democratic society". The assessment of "necessary in a democratic society" does not refer to two separate legal assessments but rather a single one. The term "in democratic society" infers that each State operates democratic legitimation to pursue which measures are necessary and suited the needs of its nationals best. To determine which means are best suited, the government must evaluate the utilization of resources and domestic needs to meet the priority [34]. It is noteworthy that the international courts should not, in the benefit of hindsight, determine what measure the State should have taken [29]. Taking into account the fact that there is no consensus over a single model of policy, each State has the primary responsibility to make its own initial assessment.

The elements of the "necessity in democratic society" test are: (i) to answering the factual pressing social needs and it is indeed (ii) to pursue a legitimate aim [35]. The first element asserts that the reasons for a State to limit a right should not be based solely on the mere "probability used" [30], but should look at the weight of interests to be served and the form of intervention to be applied. The second element implies that mandatory vaccination is permissible so long as it aims to protect public interest such as public health [30].

Every State has the positive obligation to protect the health and life of everyone within their jurisdiction [33]. In interpreting the "pressing social needs" standard, the ruling of the ECtHR held that this notion implies how the measures to be taken to meet the "relevant and sufficient" [2] of the effectiveness to address the issue. In the most recent judgment of *Vavříčka and others v. the Czech Republic*, the case concerned compulsory vaccination of children against diphtheria, tetanus, influenza, poliomyelitis, hepatitis B, measles, mumps, and rubella. Where vaccination is a legal duty in Czech Republic Law, such medical intervention is considered as the right to a secular objection of conscience for those who are exempted from the vaccination duty [33]. The Court reiterates that mandatory childhood vaccination satisfies the "pressing social needs" when the non-voluntary vaccination is not sufficient to protect vulnerable groups of individuals comparing the characteristics of diseases. The need to prevent the decline of public confidence [33] for vaccination is urgent, thus the

alteration of such policy should be considered as pressing.

Looking at the fact that in the current situation, COVID-19 patients with light to mild symptoms are required to conduct self-isolation to treat the symptoms. However, the peak of COVID-19 cases due to the spread of the Delta variants in Indonesia [36] spawned an intertwined health care crisis that reveals underlying problems in handling explosive cases. It is also heightened by the fact that the COVID-19 virus is a highly contagious one and Indonesia's positivity rate of COVID-19 is six-time higher exceeding the standard governed by the World Health Organization (hereinafter, "WHO") [37]. The COVID-19 pandemic has strained the medical system and health care workers are overwhelmed with the influx of COVID-19 patients. Hospitals are teetering due to the overcapacity which resulted in the temporarily closed of emergency units [38], scarcity of oxygen supplies and ventilators is a never-ending phenomenon. The escalated demands are not equal to the resources available to provide essential health services under these prolonged exigencies. Research concerning the physiological impacts of the COVID-19 pandemic for health care workers in Indonesia shows a high prevalence of sleeping disorders, anxiety, depression, stress, post-traumatic stress disorder, psychological distress, high risk of severe mental illness, and insomnia [39]. This long-term psychological effect also remains to be seen in China [40], Italy, France [41], and many countries. Even worse during the period of July-August of 2021, the death rate increased up to 80% as a result of Delta variants which spread six times faster than the first variants [42]. The WHO reported that vaccination will develop stronger COVID-19 immunity and more effectively than getting infected, which leads to severe complications and even deaths [43]. Based on that reason, vaccination is designated to flatten the curve concurrently. The dire need for vaccination should be seen as "pressing social needs" to protect the community as a whole, taking into account the severe risks that threaten vulnerable individuals who are unqualified to be vaccinated.

Only a legitimate purpose can justify State interference in human rights. Referring to the case of *Vavříčka and others v. the Czech Republic*, the categorization of purposes including but is not limited to public safety, public order, public health, public morals, the protection of rights, and freedom of others [26]. In the case of *Boffa v. San Marino*, another case about mandatory childhood vaccination, the Court stated that the duty along with the imposition of sanction—precisely alike with Presidential Regulation concerning COVID-19 Vaccination—is justified in the name of public health [44]. In light of the pandemic situation, COVID-19 vaccination is essentially to create a population's immune system amidst the transmission of growing pathogens. The

threshold to create herd immunity requires 67% of the population to be vaccinated, otherwise, that would be futile [5]. As stated by the ECtHR in the *Vavříčka and others v. the Czech Republic*, the herd immunity purpose underlying health policy is sufficient to justify the State's limitation of human rights [33]. It is to be concluded that the Indonesian government's intervention is in line with the presence of legitimate aim under the lens of public health objectives.

The major factor of refusal to get vaccinated was principally motivated by concern that vaccination could cause a serious pathological impact on their health and hinges on the effectiveness of some of the prescribed vaccines in question. Therefore, it is crucial to demonstrate and disseminate the scientific data in a democratic society to substantiate the potential benefits and risks of the alleged "dubious" vaccine.

As of 20 August 2021, the WHO lists out COVID-19 vaccines for Emergency Use Authorization (hereinafter, "EUA"), which among them are Pfizer-BioNTech, Moderna, Astra-Zeneca, Sinovac-CoronaVac, Sinopharm, and Janssen/Ad26 [45]. EUA defines as the authorization for the use of unapproved medical products in emergency situations that have met a certain threshold. EUA will be granted only in the case when there are no adequate, approved, and available alternatives medical products available.

As an international health organization, the WHO has the Emergency Use Listing (hereinafter, the "EUL") procedure [46] to assess the grant of EUA to make medicines, vaccines, and diagnostics available as rapidly as possible to address the emergency. The EUL procedure has stringent criteria of safety, efficacy, and quality determined after several clinical trials. Additionally, the Indonesian Ministry of Health's decision Number HK.01.07/MENKES/12758/2020 concerning the Determination of Vaccine Types for the Implementation of the 2019 Coronavirus Disease (COVID-19) Vaccination listed out a number of vaccines that can be used after the status of EUA has been granted by the National Drug and Food Agency (BPOM). The WHO listed vaccines qualified for emergency use only, as follows [47]:

**Table 1.** The WHO Emergency Use Listing of COVID-19 Vaccines

Vaccine	Status Emergency Use Authorization	Efficacy Against Severe Disease
Pfizer/BioNTech vaccine	As of 31 December 2020	95%

SII/Covishield and AstraZeneca/AZ D1222 vaccines (developed by AstraZeneca/Oxford and manufactured by the State Institute of India and SK Bio respectively)	As of 15 February 2021	62-90%
Janssen/Ad26.C OV 2.S (developed by Johnson & Johnson)	Emergency use only per 12 March 2021	85.4%
COVID-19 mRNA Vaccine (by Moderna Biotech)	As of 30 April 2021	95%
Sinopharm COVID-19 (produced by Beijing Bio-Institute of Biological Products Co Ltd, subsidiary of China National Biotec Group)	As of 7 May 2021	On process
Sinovac-CoronaVac (developed by Sinovac/China National Pharmaceutical Group)	As of 1 June 2021	51%

Therefore, mandatory vaccination schemes seem to be set as the most desirable mechanism for every State which is inherently imposed under public health rationale and it will give a substantial contribution to restructuring the impact of the COVID-19 pandemic for the benefit of mankind. This rationale is highly supported by the WHO as an international body, provided that vaccination is of paramount importance as to attend the high level of protecting the health and as an “investment for the world's future” [48].

### 3.3.3. *The Limitation Must be Proportionate in Achieving the Legitimate Aim*

The proportionality element requires a human rights limitation to not be excessive compared to the aim sought [49]. In spite of the scarcity of legal sources regarding the proportionality test in the limitation of Article 18 of the ICCPR, especially regarding the freedom of thought and conscience *vis-a-vis* public health, this element has been explained sufficiently by ECtHR in *Vavricka and others v. the Czech Republic*. The Court measured the proportionality of mandatory vaccination for various diseases by firstly seeing the safety of the vaccine [33]. This is noting that an unsafe vaccine would not be beneficial or even would be dangerous. The safety of the vaccine also includes the safety of its implementation which should consider an exemption for persons who have contraindication toward the vaccines.

Up until 17 August 2021, the Indonesian government has distributed 3 (three) types of vaccines: Sinovac, AstraZeneca, and Moderna. The Indonesian government has also approved 2 (two) other vaccines: Pfizer and Sinopharm [50]. In this matter, vaccines distributed in Indonesia have been assessed clinically with clear procedures and mechanisms [51] which are in line with international standards [52]. Each type of vaccine has been tested in 3 (three) clinical trials: the first trial is to see the ability of the vaccine in triggering the production of antibodies; the second phase is to understand the needed dose; the third phase is the trials conducted by each country to observe the vaccine efficacy towards the citizens of the relevant country [53]. All of the vaccines distributed have also shown a sufficient percentage of efficacy, namely as much as 50%, and positive impacts on the patients' health [54].

As mentioned above, there is also an exemption for persons who do not fulfill the criteria to be vaccinated in Indonesia. These criteria are established by the Ministry of Health, in the Decision of Ministry of Health 2021, covering 9 (nine) situations, among others, are the persons in question should have not had respiratory diseases, blood-related disorders, heart diseases, are not pregnant or breastfeeding, are not living with a COVID-19 patient, have normal blood pressure, etc. Although the accuracy of these criteria should have to be assessed scientifically, it has been *prima facie* in line with the available public information [55].

Besides, the question of the permissibility of the usage of vaccines under Islamic law must also be taken into account as most Indonesian citizens are Muslims [56]. Thus, the ignorance of this issue infers the wider limitation of human rights, which could impair its proportionality. In this regard, the Indonesian Council of Muslim Scholars (hereinafter, “MUI”) has assessed whether Sinovac and



Astrazeneca are halal. According to Fatwa of MUI Number 2 of 2021, Sinovac is categorized as halal, meaning that this vaccine is permissible to be used by Muslims. Pertinent to AstraZeneca, through Fatwa of MUI Number 14 of 2021, MUI asserted that despite the containment of pig trypsin in Astrazeneca, this vaccine is still permissible to be used as vaccination is an urgent issue in this pandemic. Meanwhile, MUI has not assessed the permissibility of Moderna; however, considering the urgency of the vaccine, using the same rationale used in Fatwa of MUI Number 14 of 2021, Moderna might also be permissible.

These clinical trials and exemptions for several categories of people could answer the fears and doubts of people as the counter-arguments towards the vaccine hesitancy. As the COVID-19 vaccines used in Indonesia have been tested and its implementation is overseen by the coordinating institutions, this shall provide adequate security and assurance for civilians. Through the elaborated methods and processes, the Indonesian government has lessened the risks that might be caused by vaccinations at its optimal efforts. This also shows the proportionality of these measures towards all possible adverse and positive impacts of COVID-19 vaccinations.

Secondly, the ECtHR assessed the proportionality of a mandatory vaccination by considering the onerosity of the sanction imposed by the government towards persons who refuse the vaccination. In that case, the sanction imposed was an administrative fine which “the amount was towards the lower end of the relevant scale, and cannot be considered as unduly harsh or onerous” [33]. In the present issue, the Presidential Regulation concerning COVID-19 Vaccination imposes 2 (two) types of sanctions: administrative and criminal sanctions. The administrative sanctions include the imposition of a fine and/or postponement or termination of several public services. Meanwhile, persons who obstruct the implementation of the program will be imposed with a maximum of 1 (one) year of imprisonment and/or fine up to Rp 1.000.000,00 (one million rupiahs). While the onerosity of these sanctions remains subjective to the characteristic of fairness, these sanctions are relatively lower than the sanctions imposed in relevant circumstances. For a comparison, persons who violate the provisions of health quarantine will be imprisoned for a maximum of 1 (one) year and/or fined up to Rp 100.000.000,00 (one hundred million rupiahs) according to Law Number 6 of 2018 concerning Health Quarantine.

#### **4. CONCLUSION**

According to Article 2 of the ICCPR, human rights are inherent; it is owed by States to all people within its territory and jurisdiction. Nonetheless, international human rights law enables governments to impose limitations on the exercise of human rights. The rights

to refuse vaccination which are recognized as the derivative rights under Article 18 of the ICCPR, namely rights to conscientious objection, are also subject to restrictions. As to protect the substance of human rights, the international human rights legal framework prevents arbitrary limitations by requiring the limitation to be prescribed by law, and shall only be employed if the said limitation is necessary in a democratic society and proportionate to pursue a legitimate aim.

In the context of mandatory COVID-19 vaccination in Indonesia, the phenomenon of vaccine hesitancy has emerged, seeing the COVID-19 vaccines as dubious. Meanwhile, on the other hand, the Indonesian government regulates that COVID-19 vaccinations are mandatory to the people designated. This results in the limitation of rights to conscientious objections.

However, according to the academic research conducted, this limitation is legitimate under international human rights law as it fulfills the requirements of human rights limitation, hence is not considered arbitrary. First, this program is prescribed in a widely accessible Presidential Regulation with comprehensible wordings regarding the mechanism and exemptions. The said regulation is also made following the due process of lawmaking and subjected to reviews to protect and ensure the level of democracy in Indonesia. Second, the mandatory nature of COVID-19 vaccination is necessary to be imposed to create herd immunity and thus would protect public health. This is vital as the democratic society would always weigh the rights, including the right to health, owned by other people. Considering the efficacy of COVID-19 vaccines distributed in Indonesia, the effort to vaccinate all categories of citizens is important for the greater good. Third, this vaccination is proportionate to achieve the legitimate aim, namely to protect public health. The best effort has been made to ensure its safety which can be seen through the implementation of several clinical trials and international standardized testings. Likewise, the sanction imposed on the violators is regulated to not, relatively, too onerous.

The only concern rests on the national law level, particularly in the Indonesian Constitution 1945 that requires a human rights limitation to be prescribed in the primary legislation or an Act instead of Presidential Regulation. Although this is not related to the legitimacy of this measure under international human rights law, this shows that there must be further research based on Indonesian national law. Additionally, the government needs to educate and disseminate information on the positive effects of vaccines to answer the issue of vaccine hesitancy in society. Through these efforts, the vaccination program could be conducted with a more comprehensive viewpoint to enhance its effectiveness.



## AUTHORS' CONTRIBUTIONS

All authors designed the studies together. Yosua Putra Iskandar is mainly in charge of researching and writing the Introduction, the Findings and Discussion, especially in regard to the element of provision by law and proportionality of mandatory COVID-19 vaccination in Indonesia, and also the Conclusion part. Laila Maghfira Andaretna mainly researched and wrote the Research Method part, and the Finding and Discussion part, namely about the relationship between rights to refuse vaccination and rights to conscientious objection, the concept of human rights limitation in international human rights law, and regarding the necessity of mandatory COVID-19 vaccination in Indonesia. All authors also contributed to the manuscript revisions and have approved the final version of the article.

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