

# Mandatory COVID-19 vaccination in human rights and utilitarianism perspectives

Zaid Zaid, Wempy Setyabudi Hernowo, Nanik Prasetyoningsih

Master of Law Postgraduate Program, Universitas Muhammadiyah Yogyakarta, Yogyakarta, Indonesia

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## ABSTRACT

Departing from the mandatory vaccination had been debated and received a lot of rejection which has caused intense emotions. In this study, the authors tried to evaluate the mandatory regulation of coronavirus disease 2019 (COVID-19) vaccination from a human rights and utilitarianism perspective. By conducting normative research method, this study revealed that indeed the obligation that tends to be coercive for COVID-19 vaccination seems to violate individual human rights which each individual has the right to decide for themselves whether they want to participate in the program or not without coercion. However, mandatory vaccination is still justified, from a human rights perspective, to protect other people's rights not to be infected with infectious diseases. This is also in line with a utilitarian perspective that departs from the argument that vaccines provide a myriad of benefits for many people in the midst of a pandemic, therefore to create benefits for the majority of society, the mandatory COVID-19 vaccination is something that is needed. Even if necessary, both sanctions and punishments can be justified in utilitarianism to achieve the greatest utility for the society.

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## Corresponding Author:

Zaid Zaid

Universitas Muhammadiyah Yogyakarta

Geblagan, Tamantirto, Kasihan, Bantul Regency, Special Region of Yogyakarta, Indonesia

Email: zaidrusdianto@gmail.com

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## 1. INTRODUCTION

Coronavirus disease 2019 (COVID-19) is an outbreak of an infectious disease that is dangerous to the point that it has a disruptive effect on human life in the world [1]. In Indonesia alone, since it was first discovered and found in two cases in early March 2020 [2], until now this outbreak has caused the number of cases and/or the number of deaths to have increased and expanded, which has an impact on many aspects including political, economic, social, cultural, defense and security aspects, as well as the welfare of the people in Indonesia as mentioned in the Government Regulation (*Peraturan Pemerintah* or PP) No. 21 of 2020 on Large-Scale Social Restrictions in the Context of Acceleration of Handling coronavirus disease 2019 (COVID-19) and the Government Regulation in Lieu of Law No. 1 Year 2020 on State Financial Policy and Stability of Financial Systems for the Management of coronavirus disease 2019 (COVID-19) and/or Encounter the Threat to National Economy and/or Stability of Financial. Various methods and strategies (prior to the discovery of the COVID-19 vaccine) have been implemented, starting from large-scale social restrictions (*pembatasan sosial berskala besar/PSBB*), staying at home, wearing masks, testing, contact tracing, isolating to closing borders and tightening travel to reduce transmission of SARS-CoV-2 in Indonesia [3]–[5]. However, until entering the new normal, the results obtained are not significant and even tend to be more severe. This extraordinary (terrible) epidemic seems to require an extraordinary solution as well. After going through various considerations, from the end of 2020 to the beginning of 2021, departing from the belief that mass vaccination is generally considered a solution in preventing and the best way out of

the health crisis caused by the pandemic [6]. It seems that the Indonesian government has begun to implement a policy of compulsory COVID-19 vaccination as stipulated in Article 14 of the Minister Of Health Regulation No. 10 Of 2021 On Implementation of Vaccinations in The Control of 2019 coronavirus disease pandemic (COVID-19). And of course this is the first door to the next challenge [7].

This is because vaccinations (and the policies that require them) have been a hot, morally sensitive, and most controversial issue that has sparked debate since aged times until now [8]–[10]. Departing from that, the pros and cons were born which were divided into two arguments. For those who support, vaccination policy is an integral part of national and global preparedness. Assuming an adequate supply, mandatory vaccination is a viable policy option in the context of a vaccine-preventable pandemic outbreak. But for those who refuse, let the vaccine be voluntary and it is the moral responsibility of each individual. the mandatory vaccination policy is a deprivation of individual rights and freedoms. Even more so, if there must be any punishment that is likely to make it worse [11]. Furthermore, factors such as conspiracy, side effects, and uncertainty about the effectiveness of the COVID-19 vaccine itself, which in turn affect people's perceptions of distrust (doubt), leading to rejection and protests [12]. This was reinforced by the findings of a study that stated that mandatory vaccination increased anger levels among individuals with negative vaccination attitudes [13]. For these reasons, some of the major countries such as Australia [14], the United Kingdom [12], and America [15] do not mandate COVID-19 vaccination for their citizens.

Based on the exposure, this research aims to examine and discuss whether, during the COVID-19 pandemic, the government or public health authorities can be justified in implementing a mandatory vaccination program aimed at the wider community based on the perspective of human rights and utilitarianism. The reason behind the use of human rights and utilitarianism perspectives is because both are part of legal norms or doctrines recognized in legal science based on moral values. Where human rights are basically one type of moral rights (subjective or objective) that highlight certain priority moral values that cannot be identified with a set of institutionalized rights and obligations [16]. Meanwhile, utilitarianism is a moral theory that considers the utility of welfare, happiness, or goodness as the highest value [17]. And an act, rule, public policy, or law must ultimately be evaluated by its benefit and only by its utility [18].

While other studies only focus on the evaluation of a single perspective from the point of view of libertarians [19]–[21], ethics [22], and human rights [8]. Meanwhile, this research tries to make a comparison between two perspectives, is human rights and utilitarianism. And while other studies have also focused on policy in America [23], [24], France [25], Italy [26], [27], and Europe in general [28], then, this study focused on cases of mandatory COVID-19 vaccination programs in Indonesia. Therefore, through the novelty in this study from other research, this research can expectedly provide benefits in the form of new insights related to COVID-19 vaccination and its rules and can practically become guidance for the government or related authorities in carrying out the COVID-19 vaccination program in accordance with the corridors of human rights and utilitarianism norms.

## 2. RESEARCH METHOD

As the purpose of this study examined the mandatory policy of COVID-19 vaccination from the perspective of human rights and utilitarianism, this research focused on literature review studies with a statutory, comparative, and conceptual approach. This study used a statutory approach because this research uses statutory regulations to analyze the problem. This research also compared two theories in legal theory (jurisprudence) in the form of human rights and utilitarianism so that this research will also use a comparative approach. On the other hand, the concepts in the doctrines that developed in jurisprudence serve as a basis for analysis in this research. So, this research used a conceptual approach. Thus, this research is classified as normative research. In short, this research was considered normative because, in essence, it seeks to find the truth of coherence and legitimacy related to the problem, especially whether the rule, regulation, or law is in accordance with legal norms, theories, and philosophies.

Therefore, the source of the data was secondary data. Secondary data sources in this study were taken from primary legal materials in the form of laws and regulations that apply nationally and internationally. Hence, the source of data were also secondary legal materials taken from international declarations and treaties (such as the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, and international agreements of the European Convention on Human Rights). In addition, scientific journals and books concerning health, human rights and utilitarianism and other literature (e.g. encyclopedia) that support primary data in this study were also used as sources and collected by literature review techniques. The data was then analyzed using prescriptive methods to determine what is right, wrong, good, bad, appropriate, or the opposite of them according to the law.

### 3. RESULTS AND DISCUSSION

#### 3.1. The perspective of human rights

##### 3.1.1. COVID-19 vaccination and public health right

The COVID-19 pandemic has caused such a high severity of mortality and morbidity that efforts to maximize access to health care must be emphasized [29]. The COVID-19 vaccine is one of the tools or means needed to control health emergencies caused by the COVID-19 outbreak by increasing the immunity of the community so that it can create widespread immunity for the entire community [30]. And the first possible human rights response to public health emergency preparedness is to accept it, even acknowledge it. Moreover, Article 25 of the Universal Declaration of Human Rights states that public health, which is a fundamental human right, is one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian people as referred to in Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia.

In this sense, the right to health must compel non-state actors, moreover, the state actors involved to provide disease mitigation measures to protect citizens [29]. This is because guaranteeing public health is the main task of the constitution of the Republic of Indonesia as stated in Article 28 section (1) of the 1945 Constitution of the Republic of Indonesia. Moreover, in The International Covenant on Economic, Social and Cultural Rights which has been ratified in the Law No. 11 Of 2005 On The Ratification Of The International Covenant On Economic, Social And Cultural Rights also emphasizes that every state is obliged to recognize the right of everyone to enjoy the highest standard of physical and mental health. The term "recognize" here also means guarantees and protections that instruct the State not only to refrain from deliberate and unlawful deprivation of individual life but also to take appropriate steps to protect the life of individuals within its jurisdiction [8]. One of the steps that the State considers appropriate at this time is the implementation of the mass vaccine which is mandatory for all Indonesians.

##### 3.1.2. Mandatory COVID-19 vaccinations in human rights perspective

As already discussed, this mandatory vaccination regulation has generated controversy and arguments for a particular interest. Among them is that the mandatory COVID-19 vaccination is a form of state violation of human rights without taking into account individual needs and rights [31], such as impairing and limiting autonomy to understand choices, alternatives, consequences [23], freedom of individual rights (civil liberties), and integrity towards one's body which is actually protected in Article 5 section (3) [32]. Moreover, Article 56 (1) of Law No. 36 of 2009 on Health states that "Every person has the right to accept or reject part or all of the relief measures that will be given to him after receiving and understanding the complete information regarding the action." However, section (2) letter a explains that there are exceptions for diseases that can quickly spread to the wider community."

Therefore, human rights standards that reflect individual values need to be considered when introducing public health measures [33]. In this case, the human rights theory reveals that in cases where the public interest must be protected, then of course personal choices and freedoms can be sacrificed. Because of this, it is precisely for the sake of achieving public health in a broad and comprehensive manner that interventions that involve limiting options are required [34]. The World Health Organization (WHO) also expressed a similar view in 2007, that the enjoyment of human rights and civil liberties during a pandemic emergency situation may have to be limited to the public interest [35]. The European Court of Human Rights (ECHR) also affirms that compulsory vaccination will not violate human rights law and may even be indispensable in democratic societies [36].

Based on the elucidation and explanation, we strongly agree with what was expressed by Parment that under the motto of *Salus populi suprema lex esto*, there is no doubt that the legislature can use its authority and also give authority to public officials to protect public health, even though individual rights are sacrificed [37]. Moreover, Article 8 paragraph 2 of international agreements signed by states in the European Convention on Human Rights states that "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary. in a democratic society in the interests of national security or public safety [ . . . ]" [38].

The mandatory COVID-19 vaccination from a human rights perspective can be justified (in a proportional way) [39]. It can protect public health rights from the threat of COVID-19 as long as it is proportional, reasonable, equitable, non-discriminatory, and in full compliance with national and international laws [35]. In addition, Mandatory COVID-19 vaccination without violence is also needed to ensure vaccination and a safe social life [40].

#### 3.2. The perspective of utilitarianism

##### 3.2.1. Utilitarian's perspective on vaccination

Vaccine is one of the most valuable but often undervalued achievements of public health and knowledge throughout the 20th century. In fact, vaccines are one of the important areas of public health

where there is a consensus that significant improvements have been made [41]. This is because vaccines are responsible for reducing various deadly infectious diseases. Therefore, immunization through vaccination is strongly believed to provide enormous health benefits [42] which can go beyond the prevention of certain diseases in individuals [43].

Apart from individual benefits, there are social utility implications in the fact that immunization is a tool not only for protecting immunized individuals directly, but also for protecting entire groups of people, some of whom may not be provided with immediate protection. Based on the study, vaccination has provided substantial community protective benefits for children and adults, with nearly all vaccine-preventable diseases showing  $\geq 95\%$  reduction in morbidity rates since vaccine introduction. Based on it, vaccines are absolutely very important for the protection of communities that cannot receive vaccinations (due to certain medical reasons) and for people whose effective immune response does not develop after vaccination (vaccine failure or primary immunodeficiency) [44].

In addition to the benefits for individuals and societies, other studies also reveal that there are economic benefits obtained from this vaccination program. The herd immunity that has been formed in each community will have implications for creating a sense of security in carrying out activities. This includes carrying out economic activities such as trading, shopping, traveling and so on which will have a positive impact on the economic turnover of the community and the country's economy [45].

In the case of COVID-19, immunization remains one of the most successful, safe, cost-effective prevention of underlying disease [46]. A similar statement was made by the Centers for Disease Control and Prevention (CDC). It said that the COVID-19 vaccination is a safer and more effective way to help build protection and prevention [47].

In summary, unlike most drugs that the benefit is limited to the individual using the drug, vaccine benefits have a broader potential impact that includes health service utilization, cognitive development, general health and well-being, and ultimately, economic productivity [48]. It may also be the most visible and beneficial modern evidence of our social responsibility contract that our individual actions benefit all, or are at least harmless. However, there is a need for an educational campaign about the benefits offered by the COVID-19 vaccine so that it can help the effectiveness of the COVID-19 vaccination program [49].

### **3.2.2. Mandatory COVID-19 vaccinations in utilitarianism perspective**

As the vaccine has substantial benefits and also has a positive effect in protecting not only vaccinated individuals, but also others directly by preventing transmission to other people or also indirectly by contributing to herd immunity. Based on it, ethical reflections on vaccination arise and often center on the question of whether (certain types) vaccines should be mandatory or not for the sake of public health? [50]

Although public health policies tend to limit the behavior of the few to protect the many, it operates on the principles of utilitarianism that maximize welfare [51]. Even though the mandatory COVID-19 vaccination tends to be like a form of state coercion against its people, in utilitarian principles this is not a wrong act. Coercion is sometimes used appropriately to regulate innocent behavior. Coercion is legitimate to prevent harm to others without their consent, but such harm is not always the result of wrong behavior [52]. Therefore, the call for a mandatory COVID-19 vaccination is based on the utilitarian notion that mandatory vaccination will provide maximum benefit to the public by safeguarding public health [53]. This is because the concept of utilitarianism itself is an influential form of moral consequentialism theory which states that right action is an action that aims or will produce the greatest happiness (utility) for the greatest number (majority) of society [54]. Hence, the rationale behind utilitarianism is the thought that benefit, well-being, and happiness themselves are considered very important [55].

In general, the school of utilitarianism has been divided into two, act utilitarianism and rule utilitarianism. According to act utilitarianism, right action is the action that produces the best result [56]. Based on this principle of utilitarianism, that everyone has a moral obligation to act with the aim of maximizing utility with the "best" results benefiting many people. With the analogy of the COVID-19 vaccination case, it can be stated that each individual must be vaccinated in order to contribute to herd immunity [57]. According to rule utilitarianism, the correct rules are the ones that produce the best consequences. Laws are often examples of rule-utilitarianism: laws are chosen because they produce the best consequence [56].

It's just that what's worth noting is that people are essentially doing complex cost-benefit analyzes, based on imperfect assumptions. Therefore, when vaccination incurs costs to individuals in the form of side effects, time, money, inconvenience, the individual's decision on whether to be vaccinated is based on a complex balance between the perceived cost of vaccination and disease [58]. Consequently, to maximize the utility of the state's vaccination program, then the state must reduce the costs and burdens that will be received by the societies.

In order to reduce time costs, the state can provide facility access by providing affordable vaccine places in easily accessible places such as worship houses, pharmacies, as well as health facility places such as hospitals, public health centers, doctors' offices. and for example, what allows people to get the COVID-19 vaccine anywhere and anytime without sacrificing a lot of time [59]. In addition, the free vaccine strategy may be very helpful in reducing costs in terms of price, ensuring vaccine security is also important in order to avoid the risk of dangerous side effects. This can be done by guaranteeing the due diligence and safety of the emergency use list (EUL) certification from the WHO and also halal certification from the Indonesian Council of Religious Scholars (MUI). It is just that of the seven vaccines that provided in Indonesia, unfortunately, only three types of vaccines have received certificates from the EUL-WHO (Moderna, Pfizer/BioNTech, and AstraZeneca), while the other four (Novovax, Sinovac, PT. Bio Farma and Sinopharm) still have not received WHO EUL certification. This is of course a concern for the government to be careful and immediately guarantee the safety of vaccines available to the public in order to achieve prosperity for the majority of Indonesian people.

### 3.2.3. Utilitarianism perspective on penalties

For those who refuse mandatory (COVID-19) vaccination, they argue that the state has no right to force its citizens to be vaccinated, this is because the basic principles of medical ethics say that consent must be given for any procedure. They also worry that the rule that requires vaccination is a decision to impose some form of penalties or punishments on those who do not comply with the law [60].

In the Utilitarian view, such as Mill's opinion, that violators of morality can be (reasonable) penalized [61]. yet, in the penalties or punishment, there are two basic purposes in the form of retaliation and utility. And indeed, for the Utilitarian the considerations are the costs and benefits of penalties; The focus is on the future, with the goal being achieved through reducing the likelihood of harm by actors and others in society [62]. Therefore, utilitarian principles also enact legal sanctions that are applied to coerce people in order to help them become healthy and to prevent them from accidentally spreading infectious diseases [52]. And Mill has also the view that when a person is morally fit to be punished there is no right for him to complain or protest [61].

So based on it, considering that implementing COVID-19 vaccination is a moral and legal responsibility of everyone, so for anyone who is reluctant and refuses to be vaccinated, he deserves to be penalized. And according to Julian Savulescu that lenient punishment for not being vaccinated in a severe public health emergency is justified. For example, fines withholding benefits, limiting freedom or restrictions on movement may be justified. Or it could also take the form of other sanctions such as "No Jab, No Pay" in Australia or "No Jab, No Play" in Italy [63].

As for Indonesia, the Government has issued [64] which in Article 13A section (4) regulates that anyone who has been designated as a target recipient of the COVID-19 Vaccine who does not participate in the COVID-19 Vaccination will be strictly subject to administrative sanctions starting from delay or termination of administration social security or social assistance, suspension or termination of government administration services until the imposition of fines. However, this does not apply to those who do not meet the criteria for receiving the COVID-19 vaccine according to the indications for the available COVID-19 vaccine as stated in section (3).

## 4. CONCLUSION

Apart from being considered a right, the COVID-19 vaccine is also considered to provide great benefits for individuals and the wider community by growing herd immunity. The regulation strategy of mandatory COVID-19 vaccination is considered to be the most effective strategy in increasing vaccination in the community and stopping or controlling the spread of COVID-19. Both human rights and utilitarianism view that the mandatory COVID-19 vaccination is justified. Under this reason, policies that tend to injure individuals' freedom of choice are justified. As for the view of utilitarianism, the goal to provide the greatest benefit to the majority of the community is also the justification for the acceptance of the mandatory COVID-19 vaccination policy. Even the imposition of penalties which tend to be generally less favored in utilitarian's cultures, for the reasons of the usefulness of huge COVID-19 vaccine for many people, has found its own legitimacy in utilitarianism.

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## BIOGRAPHIES OF AUTHORS






**Zaid Zaid**     is a young law graduate student in Universitas Muhammadiyah Yogyakarta with an interest in legal, jurisprudence, social, and public policy issues. Justice and social welfare as well as economic policy have been some of his writings. Since the COVID-19 pandemic began to enter Indonesia, public policies related to public health and health welfare have become the main focus of his attention. He can be contacted at email: zaidrusdianto@gmail.com.



**Wempy Setyabudi Hernowo**    is a graduate student of Master of Law, University of Muhammadiyah Yogyakarta. Previously, he completed his undergraduate education at the Faculty of Law, Jenderal Soedirman University, Purwokerto. He is also currently active as a lawyer and works in the legal department at PKU Muhammadiyah Gombong Hospital. He can be contacted at email: [wempy.setyabudi@yahoo.com](mailto:wempy.setyabudi@yahoo.com).



**Nanik Prasetyoningsih**    is an Associate Professor of Post-Graduate Program and Faculty of Law at Indonesia's Universitas Muhammadiyah Yogyakarta. She has worked as a constitutional law professor. She has a few peer-reviewed scientific articles published in journals on constitutional law, human rights, democracy, and constitution issues. She has worked on numerous research projects relating to constitutions, human rights, and democracy. She can be contacted at email: [nanikprasetyoningsih@umy.ac.id](mailto:nanikprasetyoningsih@umy.ac.id).