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# ANTINOMY SETTLEMENT OF LEGAL INTEREST BETWEEN AUTONOMOUS RIGHTS AND OBLIGATIONS OF HEALTH SERVICES AGAINST REFUSALS OF CORONAVIRUS DISEASE 2019 VACCINE

## ABSTRACT

*This study aimed to determine the legality of implementing COVID-19 vaccination and the individuals' independent right to reject it. A normative juridical approach, which entails primary legal materials (laws) and secondary legal materials (health and medical law literature) was used and the legal materials analyzed qualitatively. Furthermore, the set standards on the two legal interests in the implementation of the COVID-19 vaccination were analyzed. The results showed that the vaccination process focuses on the health services obligation rather than on maintaining autonomous rights over the body. This is in line with the academic approach that follows altruistic philosophy, the principle of public interest, the theory of the welfare state law, and the proportionality of legal restrictions on rights in-laws and regulations. Furthermore, legislators should enact laws that govern vaccination. The vaccines should be administered per the village and neighborhood using trained and medical specialists.*

*Keywords: COVID-19 Vaccination, Health Services, Autonomous Rights.*

## INTRODUCTION

The Deputy Minister of Law and Human Rights, Eddy O.S. Hiariej, was quoted by several electronic and print media stating that "criminal sanctions and fines can be imposed on those who continue to refuse the COVID-19 vaccination." The minister's sentiment was in line with Article 39, paragraph 1 of Law No. 6 of 2018 concerning Health Quarantine. This law states that "everyone who does not comply with or hinders the implementation of health quarantine to cause a public health emergency can be punished with a maximum imprisonment of one year and/or a maximum fine of IDR 100 million." Moreover, Article 9 Junction Article 15 paragraph 2 letter an of the Health Quarantine Act, states that everyone is obliged to comply with the implementation of health quarantine, including vaccination.

The government has also raised the punishment for refusing vaccination as an *ultimum remedium* to provide the last alternative in the pattern of implementation. It continues to prioritize administrative sanctions, seen by implementing the Large-Scale Social Restriction program (Sherly Adam, Etaal, 2021). Instead of taking coercive measures against its citizens, the Indonesian government should rationally discuss the anti-vaccination groups to help them see why the Vaccine is mandatory.

This study uses a philosophical, theoretical, principle, and juridical-based approach to examine the correct course of action. Furthermore, the government can accelerate smooth COVID-19 vaccination in Indonesia by encouraging the philosophy of socialization among its ordinary citizens. The philosophy will

encourage them to save themselves through government-based vaccination to save their loved ones from COVID-19 transmission.

There is no research focused on the legal implication of refusing the administration of COVID-19 Vaccine. Muhamad Beni Kurniawan (2021) on human rights in handling the COVID-19 Pandemic focused more on the value of implementing Large-Scale Social Restrictions (PSBB) program. They concluded that the government restriction program aimed to release the central government's responsibility to fulfill people's basic needs and livestock in the quarantine area. Dyah Trihardini (2020) also used a human rights approach to study government policies in handling the COVID-19 Pandemic, focusing mainly on health workers' health and safety insurance rights. The study established that these rights had not been realized due to the complexity of local government bureaucracy and unequal distribution of Personal Protective Equipment (PPE).

Supriyadi (2020) analyzed government policies in dealing with the COVID-19 Pandemic from a forecast perspective. This research found that the government had failed to advocate for people's welfare. Basic needs were not fully addressed, and the legal framework for financial management in handling the COVID-19 Pandemic was not yet complete. These frameworks could govern the use of budget during the Pandemic without civil and criminal liability to avoid unnecessary errors. Furthermore, Mahesa Pranadipa Maikel (2020) examined the effects of refusal to abide by health protocols during the COVID-19 Pandemic and the normative application of criminal sanctions. However, it failed to conduct a diametrical study on the two legal interests used in government health services for the COVID-19 prevention.

The above studies did not focus on the antinomy of legal interest in the administration of COVID-19 vaccination. Therefore, this research is necessary to streamline government programs in facilitating COVID-19 vaccination. The study established the reasons for prioritizing health services obligations to carry out vaccination while justifying reasons or exceptions for autonomous rights to resist the Vaccine.

## **RESEARCH METHODS**

### ***Research Type***

This research is normative juridical research that employs a conceptual approach (Marzuki: 2010). It heavily relies on the theoretical study of the existing literature by connecting the problems to the subject of discussion. Additionally, the research analyzed legal issues, such as the antinomy of legal interests between autonomous rights over the body and health service obligations when refusing COVID-19 Vaccine.

### ***Legal Material***

This research used primary and secondary legal materials, with the former including the 1945 Constitution, Law Number 36 of 2009 concerning Health, Law Number 39 of 199 concerning Human Rights, and Presidential Regulation Number 14 of 2021 on the Amendments to Presidential Regulation Number 99 of 2020. The presidential Regulation was formulated to guide the Vaccination Procurement and Implementation to help citizens cope with the COVID-19 Pandemic. In contrast, the secondary legal materials were literature related to health and medical law.

#### ***Collection Method***

The legal materials for the study were collected using library research. This involved conducting searches on laws and regulations, journals, books, and writings directly related to the problems examined.

#### ***Analysis***

The research used qualitative analysis when examining the legal materials by describing the legal antinomy between the autonomous right to the body and the obligation of health services in the administration of COVID-19 vaccination. The study also used a legal conceptualization to obtain the main legal interest and justify one's right to refuse the administration of COVID-19 vaccination.

### **ANALYSIS AND DISCUSSION**

#### **A. Prioritizing Obligations of Health Service by the State about the Autonomous Right to Refuse COVID-19 Vaccines**

Covid-19, also known as Coronavirus Disease-19, has affected people's lives for the last two years as it transmits across the globe. By January 28, 2021, there were 87,640,097 million positive cases, with 1,890,847 deaths in over 215 countries in the world (Kurniawan, 2021).

The emergence of the new "Delta" variant in India, Indonesia, and the surrounding countries have dealt a huge blow to the people. The statistics from the Task Force on the Acceleration of COVID-19 (databoks.katadata.co.id: 2021) show that the cumulative positive cases in July 2021 were 3,409,658. Most of these cases were from the new variant that killed many people in India. The rise in infection after normalizing the curve saw the government issue restrictive policies, such as the Community Activities Restrictions Enforcement (PPKM) program to reduce virus transmission.

Indonesia may manage the spread of the new variant due to the available vaccines from other countries. The vaccine arrival and quick implementation could help curb the spread and the effects of the new variant. Data from the Ministry of Health indicate that a total of 21,496,995 have been vaccinated to date (August 3, 2021). This accounts for 444.64% of the eligible population (48,148,817 people). The data is

encouraging, with many Indonesians eager to participate in vaccination, as witnessed in long queues in private and public institutions. Nevertheless, some still refuse vaccination, even though the state bears the cost.

People are refusing vaccines for many reasons, including juridical reasons, religious reasons, and others who suspect the material to be *haram* (prohibited). Additionally, others refuse vaccination for safety reasons, fearing it will affect their health and result in death. The major legal challenge the state is facing towards vaccination is that everyone has autonomous rights over their bodies (Jacobalis, 2005). The autonomous right to one's body is a fundamental human right that should not be interfered with unless there is a strong argument to do so (Leenen and Laminintang, 1991).

The citizens' autonomous rights are included in Article 28 G paragraph 1 of the 1945 Constitution, which states that "Everyone has the right to protect personal, family, honor, dignity, and property under his control. This law also alludes to the right one has for a sense of security and protection from the threat of fear to do or not do something, considered a human right." Moreover, Article 5 paragraph 3 of Law no. 36/2009 on health shows that "everyone has the right to independently and responsibly determine the health services needed for them."

The autonomous rights referred to in the above laws do not stand alone in the legislation. These laws should be read with consideration to legal provisions mandating the state to form health service policies for every citizen. For instance, Article 34, paragraph 3 of the Constitution states that "The state is responsible for the provision of proper health care facilities and public service facilities." Article 14, paragraph 1 of Law no. 36/2009 on health also affirms that "The government is responsible for planning, regulating, organizing, fostering, and supervising the implementation of equitable and affordable health efforts for the community."

Based on the two legal paradigms mentioned above, there are two incompatibilities of legal interest between autonomous rights and health service obligations. The question implementers are which part of the legal interest should take precedence against the refusal of COVID-19 Vaccine? The research ascertains that the obligation of health services takes precedence over the autonomous right to body based on the following arguments:

First, it is based on an altruistic philosophical approach, which promotes togetherness between communities by providing help to others without expecting any favors (Dewantara, 2017). This philosophy is closely related to the flow of utilitarianism, considered the precedence to the principle of expediency, as popularized by Jeremy Bentham. The purpose of this law aims to provide happiness for as many people as possible (Fios: 2012). The study observed that this flow is not the result of social interaction but is innate from

a person's birth. Everyone is born with the desire to preserve their life and endowed with good qualities to positively contribute to the surrounding environment. Therefore, the anti-COVID-19 stand pegged on the autonomous right on one's body may not be just if it endangers others. A person's right to their body should be inextricably linked with the external obligation to do good for others. It means that one's independence over the body cannot be used as an excuse to refuse the COVID-19 Vaccine without a basic reason since they should radiate kindness in protecting their surroundings. It is understood that the autonomous right to one's body and the state's obligation to provide health services are needed by human beings; therefore, they are integral units that cannot be separated from each other.

Second, it is based on the theory of the welfare state law, which carries the material law and the people's welfare. This law obligates the state to advance people's welfare through services, assistance, protection, and prevention of social problems (Elviandri, et al., 2019). The government's approach agrees with an old saying, "*salus populi suprema lex exsto*," used by monarch state. The saying can also be applied in a democratic government when it applies strict rules during an emergency (Faiz, 2020). For example, the government issues strict regulations during Covid-19, such as the Presidential Decree No. 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID -19) as a National Disaster.

The Indonesian government has issued policies to curb Covid-19 transmission and to provide health services through vaccines. A person infected by the coronavirus loses his autonomous right to the body and becomes of public interest. The government takes over the responsibility of providing essential health services for the public good. In theory, this law is derived from various state policies due to its obligation to prevent and curb the transmission of the COVID-19. These policies include regional quarantine, Large-Scale Social Restrictions (PSBB), and the Community Activities Restrictions Enforcement (PPKM).

Third, the law is formulated using the legal principle approach. The principle used to bridge the antinomy of legal interest between the autonomous right to the body and the obligation to provide health services concerning the administration of the COVID-19 vaccination prioritizes public interest over personal interest (*Bonum commune Bono private preferred debet*). Public interest is defined in Article 10 paragraph 1 letter G of Law Number 30 of 2014, which states that "the principle of public interest prioritizes the public welfare and benefit through an aspirational, accommodating, selective, and not discriminatory laws." This definition indicates that public interest can be determined through people's will and by prioritizing services fairly when implementing public policies. The understanding of public interest obligates a citizen in contact with health services to implement COVID-19 vaccination to create a healthy life and environment. The

reasoning behind this policy is that Covid-19 vaccination should be prioritized if it does not threaten the body, thus dismissing vaccine resistance that uses the autonomous right to the body. The study observed that defending autonomous rights often results in loss of lives, but following government direction on vaccination saves others' lives.

Fourth, the policies follow the juridical approach, resulting from the philosophical and theoretical reasoning of developing norm text or imperative clauses (Hart, 1994). The statutory regulation that covers right formulation talks about citizens' rights and formulating known restrictions and obligations that should be fulfilled. These obligations and restrictions meet with the original rights that have been normalized at this time. Though Article 28 G paragraph 1 of the 1945 Constitution recognizes that everyone has autonomous rights over their bodies, these rights are limited through (Article 28 J paragraph 2 of the 1945 Constitution. The limitation guarantees the "recognition and respect of others' rights and freedoms by justly considering religious values, morals, security, and public order in a democratic society." Additional laws include Law Number 39 of 1999 on Human Rights highlighted in Article 69 paragraph 1, which states that: "Everyone is mandated to respect other people's rights, morals, ethics, and the order of life in society, nation and state." Furthermore, Article 69 paragraph 2 also emphasizes that: "Every human right creates a basic obligation and responsibility to respect the rights of fellow humans in return and that the Government must respect, protect, uphold and promote those rights."

This paper aims to adopt restrictions on people's rights while considering their obligations. The autonomous right over one's body cannot take precedence over health care obligations since the body in question can also injure other human bodies through a virus or pathogen transmission. The basis for this reasoning is that the virus hiding in an autonomous body cannot be made autonomous. Therefore, the state will follow the laws as stipulated in Article 28 H paragraph 1 of the 1945 Constitution, which states that: "Everyone has the right to live in physical and spiritual prosperity, in a good and healthy living environment and the right to health services." The "Everyone" as used in this statute does not refer to an Individual but a community. Article 34, paragraph 3 of the 1945 Constitution guarantees everyone's interest in obtaining health services when talking about the general population. Additionally, Article 152 paragraph 1 of Law Number 36 of 2009 concerning Health highlights the state's responsibility in providing health services, stating that: "The government, local government, and the community are responsible for preventing, controlling, and eradicating infectious diseases and their consequences."

The laws we have discussed show that the state's response to COVID-19 through policies in Indonesia is valuable in providing health care obligations than the autonomous right to the body. The government's

effort in making the COVID-19 Vaccine available should also be considered. Since the Vaccine is costly to produce, the Indonesian government has imported different types, including Sinovac, AstraZeneca, Sinopharm, Moderna, Pfizer, and Sputnik.

Nevertheless, the government should accelerate research in producing domestic Vaccines. Some stride is already being made with the emergence and development of the current Merah Putih vaccine through a collaboration between the Ministry of Research and Technology/National Research and Innovation Agency (Kemristek/BRIN) with the Ministry of Health. This domestic Vaccine will help distant villages after pre-clinal and clinal trial periods, helping prevent the spread of the virus to remote areas.

The vaccination process can be hastened by following the pattern set by-elections, which takes only one day for the entire country. Instead of polling stations (TPS), the vaccine team can use Vaccine implementation place (TPV), vaccinating 100 people per TPV a day. The health workers who inject the Vaccine into everyone can be recruited from some students in the health and medical faculties by providing them with education and technical guidance before going into the field.

## **B. JUSTIFICATION FOR THE ENACTMENT OF THE AUTONOMOUS RIGHT TO REFUSE THE COVID-19 VACCINE**

The state's implementation of a COVID-19 vaccine in accomplishing its obligation for providing health services is for the common good of all people. Legal science provides a balance point in implementing public policies without ignoring the essential rights of everyone.

According to the prevailing medical research, certain vaccines, such as Sinovac, cannot be given to people, including those who have a confirmed history of COVID-19, pregnant and lactating women, individuals under 18 years of age, those experiencing ARI symptoms such as cough/cold/shortness of breath in the last seven days, and those with blood pressure above 140/90. It should also not be given to people that have family members who are in close contact with or undergoing treatment due to COVID-19 disease, those under long-term active therapy for blood disorders, Systemic Autoimmune disease (SLE/Lupus, and have heart disease (heart failure/coronary heart disease). Additionally, individuals with Sjogren's, kidney disease, hypothyroidism due to autoimmune disease, Rheumatoid Arthritis, blood disorders, chronic digestive tract disease, cancer, and immune deficiency should not be vaccinated with Sinovac. Research is also indicated that recipients of blood products/transfusions, those with Diabetes Mellitus, have HIV (in certain conditions, the COVID-19 Vaccine can be given), have lung diseases such as asthma, COPD, and have tuberculosis should not be vaccinated with Sinovac (COVID19.go.id, 2021).

Article 13, paragraph 3 of the Presidential Regulation Number 14 of 2021 on the Amendments to Presidential Regulation Number 99 of 2020, covers the rights of those who experience side effects of the COVID-19 Vaccine. The amendment done on the Vaccination Implementation in the Context of COVID-19 Pandemic Prevention (Last Amendment with Presidential Regulation No. 51/2021) states that "the target recipients of the COVID19 Vaccine who do not meet the criteria are excluded from the obligation as referred to in paragraph 21 in accordance with the indications of the available Vaccine."

Therefore, the law provision does not fully protect a person who cannot be vaccinated since each circulating Vaccine requires Standard Operating Procedures (SOP). However, there is no complete data on who cannot be vaccinated. Those with a clear track record of the disease from the upper-middle-class can be exempted from the Vaccine if it is unsafe. However, some lower-middle-class people have complained about inequality in receiving vaccinations due to a lack of accurate health checks. This person cannot be ignored during vaccination since they may become carriers of the virus and transmit it to others in the future.

Due to distrust in the administration of vaccines in the country, the government has issued a decree through Article 15 B of Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation stating the following: "(1) In the case of adverse side effects following COVID-19 vaccination, as referred to in Article 15 A paragraph (3) and in case the Vaccine cause a disability or death, the government will offer compensation. (2) The compensation, as referred to in paragraph (1), is awarded should the Vaccine result in disability or death, (3) Further provisions regarding the criteria, form, and amount for compensation as indicated in paragraph (1) shall be stipulated by the Minister of Health after obtaining approval from the Minister of Finance."

Anti-vaccine groups can interpret the article for the provision of compensation by the state as unsafe because the government is anticipating causalities from the vaccinations. The law does not hold health workers accountable for any vaccine eventualities, though they are the one who administers the drug. This situation presents a dilemma for the targeted vaccine recipients from rural areas and inner community groups, who care less about compensation if their bodies and lives are not valued. Therefore, the autonomous right over the body should not be enforced on this group. Nevertheless, the government proves accountable for the Vaccine's negative impact through compensation, with no legal recourse on health workers who make mistakes in injecting vaccines and providing a diagnosis. This serves as a warning and concern for future vaccine administration activities. Autonomy and personal life do not justify special treatment or protection of those who do not deserve to receive vaccines.

The principle of equality before the law should be balanced between vaccine recipients and givers. Though the government is quick to provide warnings to those refusing vaccines through Presidential Regulation on Vaccine Procurement and Vaccination Implementation in the Context of Handling the COVID-19 Pandemic, there are no criminal sanctions for vaccine givers when they err in diagnosing prospective vaccine recipients. For instance, Article 13 A paragraph 4 and 5 states that "(4) Any person who has been designated as the target recipient of the COVID-19 Vaccine and does not participate in the COVID-19 vaccination as referred to in paragraph (2) may be subject to administrative sanctions, such as (a). postponement or termination of the social security or assistance; (b). postponement or termination of government administration services; and (c). fine. The article also states that; (5) the administrative sanctions as referred to in paragraph (4) shall be imposed by the ministry, institution, regional government, or agency following their respective authorities. This article is closely followed by the criminal sanction in Article 13 B, which states that: "Everyone designated as the target recipient of the COVID-19 Vaccine, but does not follow the COVID-19 Vaccination as referred to in Article 13 A paragraph (2) and causes obstruction of the implementation of the COVID-19 spread prevention, will be given sanctions as referred to in Article 13 A paragraph (a) and may be imposed by the provisions of the law on Infectious Disease Outbreaks."

These problems will continue in the future during the vaccination period, as many people continue queuing to hunt for vaccines until health workers who provide vaccines inject up to hundreds of people. Even though the vaccine supplies are not sufficient for everyone, vaccine administration activities should be arranged in a place and time based on the neighborhood, village, or sub-district area. At the same time, it is necessary to add health workers to provide vaccine injections by recruiting students from health and medical personnel. Furthermore, regulation of vaccination should not be left only to Presidential Regulation. Still, there is a need to form a special law that governs the necessary sanctions for those refusing.

Moreover, there is no agreement in criminalizing those who refuse vaccination. Others argue that the Infectious Disease Outbreak and the Health Quarantine Laws were not meant to trap parties who reject government policies handling the COVID-19 Pandemic. Another argument is that the regulations for handling the COVID-19 Pandemic should not be formulated as a criminal offense, cause a health emergency, or be deterred from implementing the prevention of the spread of COVID-19 circumstances in question are difficult to prove. The regulation is focused on the material on prevention, showing that the emphasis is on acts rather than waiting for the consequences of resistance to government policies in health services.

## **CONCLUSIONS AND SUGGESTIONS**

The main objective of Indonesian legal interest is implementing COVID-19 vaccination as the state's obligation of health services rather than maintaining autonomous rights over the body. This philosophy of prioritizing health service obligations is supported by philanthropic philosophy, the principle of the public interest, the theory of the welfare state law, and the proportionality of legal restrictions on rights in-laws and regulations. Autonomous rights over the body can be applied to citizens with limited conditions as long as they experience legitimate resistance to receiving COVID-19 vaccinations.

The COVID-19 vaccination requires special legislation in addition to the presidential regulations. The Covid-19 vaccination process restricts some rights for smooth and quick operations intended to save lives. This process cannot be left for the private sector alone to handle but should be governed by the state policy with the vaccination pattern based on the village or neighborhood area. The law should also balance the recruitment of vaccine givers from health and medical universities.

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## Author(s)

Dr. Amir Ilyas

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IJCJS <no-reply@manuscriptlink.com>

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Corresponding Author: Amir Ilyas

Affiliation of Corresponding Author: Hasanuddin University

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# ANTINOMY SETTLEMENT OF LEGAL INTEREST BETWEEN AUTONOMOUS RIGHTS AND OBLIGATIONS OF HEALTH SERVICES AGAINST REFUSALS OF CORONAVIRUS DISEASE 2019 VACCINE: THE CASE OF INDONESIA

Amir Ilyas<sup>1</sup> & Slamet Sampurno<sup>2</sup>  
Hasanuddin University, Indonesia

## ABSTRACT

*This study aimed to determine the legality of implementing COVID-19 vaccination and the individuals' independent right to reject it. A normative juridical approach, which entails primary legal materials (laws) and secondary legal materials (health and medical law literature) was used and the legal materials were analyzed qualitatively. Furthermore, the set standards on the two legal interests in the implementation of the COVID-19 vaccination were analyzed. The results showed that the vaccination process focuses on the health services obligation rather than on maintaining autonomous rights over the body. This is in line with the academic approach that follows altruistic philosophy, the principle of public interest, the theory of the welfare state law, and the proportionality of legal restrictions on rights in-laws and regulations. Furthermore, legislators should enact laws that govern vaccination. The vaccines should be administered per the village and neighborhood using trained and medical specialists.*

**Keywords**— COVID-19 Vaccination, Health Services, Autonomous Rights.

## 1. INTRODUCTION

The Deputy Minister of Law and Human Rights, Eddy O.S. Hiariej, was quoted by several electronic and print media stating that “criminal sanctions and fines can be imposed on those who continue to refuse the COVID-19 vaccination.” The minister’s sentiment was in line with Article 39, paragraph 1 of Law No. 6 of 2018 concerning Health Quarantine. This law states that “everyone who does not comply with or hinders the implementation of health quarantine from causing a public health emergency can be punished with a maximum imprisonment of one year and/or a maximum fine of IDR 100 million.” Moreover, Article 9 Junction Article 15 paragraph 2 letter an of the Health Quarantine Act, states that everyone is obliged to comply with the implementation of health quarantine, including vaccination (Government of Indonesia 2018).

The government has also raised the punishment for refusing vaccination as a final remedy (*ultimum remedium*) to provide the last alternative in the pattern of implementation. It continues to prioritize administrative sanctions, seen by implementing the Large-Scale Social Restriction program (Adam et al. 2021; Kurniawati, Rochmah, and Laksono 2020). To help the anti-vaccination groups understand why vaccination is mandatory, the Indonesian government must rationally have an open dialogue regarding this issue.

This study uses a philosophical, theoretical, principle, and juridical-based approach to examine the correct course of action. Furthermore, the government can accelerate smooth COVID-19

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<sup>1</sup> Lecturer, Faculty of law, Hasanuddin University, Makassar, 90245, Indonesia. Email : [amir\\_fh\\_unhas@yahoo.com](mailto:amir_fh_unhas@yahoo.com), [wenlan195@gmail.com](mailto:wenlan195@gmail.com)

<sup>2</sup> Lecturer, Faculty of law, Hasanuddin University, Makassar, 90245, Indonesia. Email: [slametss\\_68@yahoo.com](mailto:slametss_68@yahoo.com)

vaccination in Indonesia by encouraging the philosophy of socialization among its ordinary citizens (Mottelson et al. 2021). The philosophy will encourage them to save themselves through government-based vaccination to save their loved ones from COVID-19 transmission.

A thorough search of the relevant literature regarding the legal implication of declining to get the Covid-19 vaccination in Indonesia yielded no result; nevertheless, various studies have been conducted on how the COVID-19 pandemic was handled. Kurniawan (2021) examined the human rights approach to dealing with the Covid-19 pandemic, with a particular emphasis on the need of adopting Large-Scale Social Restrictions (PSBB) programs. Additionally, Handini n.d. (2020) employed a human rights perspective to examine government policies related to the COVID-19 pandemic, with a particular emphasis on health and safety insurance rights for health professionals. The study established that these rights were not achieved as a result of the complexity of local government bureaucracy and uneven distribution of Personal Protective Equipment (PPE).

Supriyadi, (2020) analyzed government policies in dealing with the COVID-19 pandemic from a forecast perspective. This research found that the government had failed to advocate for people's welfare. Basic needs were not fully addressed, and the legal framework for financial management in handling the COVID-19 pandemic was not yet complete. These frameworks could govern the use of budget during the pandemic without civil and criminal liability to avoid unnecessary errors. Furthermore, Maikel, (2021) examined the effects of refusal to abide by health protocols during the COVID-19 pandemic and the normative application of criminal sanctions. However, it failed to conduct a diametrical study on the two legal interests used in government health services for the COVID-19 prevention.

The above studies did not focus on the antinomy of legal interest in the administration of COVID-19 vaccination. Therefore, this research is necessary to streamline government programs in facilitating COVID-19 vaccination. The study established the reasons for prioritizing health services obligations to carry out vaccination while justifying reasons or exceptions for autonomous rights to resist the vaccine when medical reasons apply.

## **2. RESEARCH METHODS**

### **2.1. Research Type**

This research is normative juridical research that employs a conceptual approach (Marzuki: 2010). It heavily relies on the theoretical study of the existing literature by connecting the problems to the subject of discussion. Additionally, the research analyzed legal issues, such as the antinomy of legal interests between autonomous rights over the body and health service obligations when refusing COVID-19 Vaccine.

### **2.2. Legal Material**

This research used primary and secondary legal materials, with the former including the 1945 Constitution, Law Number 36 of 2009 concerning Health, Law Number 39 of 199 concerning Human Rights, and Presidential Regulation Number 14 of 2021 on the Amendments to Presidential Regulation Number 99 of 2020. The presidential regulation was formulated to guide the Vaccination Procurement and Implementation to help citizens cope with the COVID-19 pandemic. In contrast, the secondary legal materials were literature related to health and medical law.

### **2.3. Analysis**

The research used qualitative analysis when examining the legal materials by describing the legal antinomy between the autonomous right to the body and the obligation of health services in the administration of COVID-19 vaccination. The study also used a legal conceptualization to obtain the main legal interest and justify one's right to refuse the administration of COVID-19 vaccination.

### 3. ANALYSIS AND DISCUSSION

#### 3.1. Prioritizing Obligations of the Health Service by the State about the Autonomous Right to Refuse COVID-19 Vaccines

Covid-19, also known as Coronavirus Disease-19, has affected people's lives for the last two years as it transmits across the globe. By January 28, 2021, there were 87,640,097 million positive cases, with 1,890,847 deaths in over 215 countries in the world (Kurniawan 2021).

The emergence of the new "Delta" variant in India, Indonesia, and the surrounding countries have dealt a huge blow to the people (Alexandar et al. 2021). The statistics from the Task Force on the Acceleration of COVID-19 Kemenkes, (2021) show that the cumulative positive cases in July 2021 were 3,409,658. Most of these cases were from the new variant that killed many people in India (Sasikumar et al. 2020). The rise in infection after normalizing the curve saw the government issue restrictive policies, such as the Community Activities Restrictions Enforcement (PPKM) program to reduce virus transmission.

Indonesia may manage the spread of the new variant due to the available vaccines from other countries. The vaccine arrival and quick implementation could help curb the spread and the effects of the new variant. Data from the Ministry of Health indicate that a total of 21,496,995 have been vaccinated to date (August 3, 2021). This accounts for 444.64% of the eligible population (48,148,817 people). The data is encouraging, with many Indonesians eager to participate in vaccination, as witnessed in long queues in private and public institutions. Nevertheless, some still refuse vaccination, even though the state bears the cost.

People are refusing vaccines for many reasons, including juridical reasons, religious reasons, and others who suspect the material to be *haram* (prohibited). Additionally, others refuse vaccination for safety reasons, fearing it will affect their health and result in death. The major legal challenge the state is facing towards vaccination is that everyone has autonomous rights over their bodies (Samsi and Jacobalis 2005). The autonomous right to one's body is a fundamental human right that should not be interfered with unless there is a strong argument to do so (Brennan, Carr, and Cousins 2007; Office of the High Commissioner Human Rights 2011).

The citizens' autonomous rights are included in Article 28 G paragraph 1 of the 1945 Constitution, which states that "Everyone has the right to protect personal, family, honor, dignity, and property under his control. This basic law also alludes to the right one has for a sense of security and protection from the threat of fear to do or not do something, considered a human right." Moreover, Article 5 paragraph 3 of Law no. 36/2009 on health shows that "everyone has the right to independently and responsibly determine the health services needed for them."

The autonomous rights referred to in the above laws do not stand alone in the legislation. These laws should be read with consideration to legal provisions mandating the state to form health service policies for every citizen. For instance, Article 34, paragraph 3 of the Constitution states that "The state is responsible for the provision of proper health care facilities and public service facilities." Article 14, paragraph 1 of Law no. 36/2009 on health also affirms that "The government

is responsible for planning, regulating, organizing, fostering, and supervising the implementation of equitable and affordable health efforts for the community."

Based on the two legal paradigms mentioned above, there are two incompatibilities of legal interest between autonomous rights and health service obligations. The question implementers are which part of the legal interest should take precedence against the refusal of COVID-19 Vaccine? The research ascertains that the obligation of health services takes precedence over the autonomous right to body based on the following arguments:

First, it is based on an altruistic philosophical approach, which promotes togetherness between communities by providing help to others without expecting any favors (Fraser and Sterelny 2015; Li 2021). This philosophy is closely related to the flow of utilitarianism (Mitchell 1987), considered the precedence to the principle of expediency, as popularized by Jeremy Bentham (Quinn 2017). The purpose of this law aims to provide happiness for as many people as possible. The study observed that this flow is not the result of social interaction but is innate from a person's birth. Everyone is born with the desire to preserve their life and endowed with good qualities to positively contribute to the surrounding environment. Therefore, the anti-COVID-19 stand pegged on the autonomous right on one's body may not be just if it endangers others. A person's right to their body should be inextricably linked with the external obligation to do good for others. It means that one's independence over the body cannot be used as an excuse to refuse the COVID-19 Vaccine without a basic reason since they should radiate kindness in protecting their surroundings. It is understood that the autonomous right to one's body and the state's obligation to provide health services are needed by human beings; therefore, they are integral units that cannot be separated from each other.

Second, it is based on the theory of the welfare state law, which carries the material law and the people's welfare. This law obligates the state to advance people's welfare through services, assistance, protection, and the prevention of social problems (Elviandri 2019). The government's approach agrees with an old saying, "*Salus Populi suprema lex exsto*," used by monarch state. The saying can also be applied in a democratic government when it applies strict rules during an emergency (Faiz 2020). For example, the government issues strict regulations during Covid-19, such as the Presidential Decree No. 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID -19) as a National Disaster.

The Indonesian government has issued policies to curb Covid-19 transmission and to provide health services through vaccines. A person infected by the coronavirus loses his autonomous right to the body and becomes of public interest. The government takes over the responsibility of providing essential health services for the public good. In theory, this law is derived from various state policies due to its obligation to prevent and curb the transmission of the COVID-19. These policies include regional quarantine (Aviariska 2020), Large-Scale Social Restrictions (PSBB) (Suraya et al. 2020), and the Community Activities Restrictions Enforcement (PPKM)(Ilyas 2021).

Third, the law is formulated using the legal principle approach. The principle used to bridge the antinomy of legal interest between the autonomous right to the body and the obligation to provide health services concerning the administration of the COVID-19 vaccination prioritizes public interest over personal interest (*Bonum commune Bono private preferred debit*). Public interest is defined in Article 10 paragraph 1 letter G of Law Number 30 of 2014, which states that "the principle of public interest prioritizes the public welfare and benefit through aspirational, accommodating, selective, and not discriminatory laws." This definition indicates that public interest can be determined through people's will and by prioritizing services fairly when implementing public policies. The understanding of public interest obligates a citizen in contact

with health services to implement COVID-19 vaccination to create a healthy life and environment. The reasoning behind this policy is that Covid-19 vaccination should be prioritized if it does not threaten the body, thus dismissing vaccine resistance that uses the autonomous right to the body. The study observed that defending autonomous rights often results in loss of lives, but following government direction on vaccination saves others' lives.

Fourth, the policies follow the juridical approach, resulting from the philosophical and theoretical reasoning of developing norm texts or imperative clauses (Hart 1994). The statutory regulation that covers right formulation talks about citizens' rights and formulating known restrictions and obligations that should be fulfilled. These obligations and restrictions meet with the original rights that have been normalized at this time. Though Article 28 G paragraph 1 of the 1945 Constitution recognizes that everyone has autonomous rights over their bodies, these rights are limited through (Article 28 J paragraph 2 of the 1945 Constitution. The limitation guarantees the "recognition and respect of others' rights and freedoms by justly considering religious values, morals, security, and public order in a democratic society." Additional laws include Law Number 39 of 1999 on Human Rights highlighted in Article 69 paragraph 1, which states that: "Everyone is mandated to respect other people's rights, morals, ethics, and the order of life in society, nation and state." Furthermore, Article 69 paragraph 2 also emphasizes that: "Every human right creates a basic obligation and responsibility to respect the rights of fellow humans in return and that the Government must respect, protect, uphold and promote those rights."

This paper aims to adopt restrictions on people's rights while considering their obligations. The autonomous right over one's body cannot take precedence over health care obligations since the body in question can also injure other human bodies through a virus or pathogen transmission. The basis for this reasoning is that the virus hiding in an autonomous body cannot be made autonomous. Therefore, the state will follow the laws as stipulated in Article 28 H paragraph 1 of the 1945 Constitution, which states that: "Everyone has the right to live in physical and spiritual prosperity, in a good and healthy living environment and the right to health services." The "Everyone" as used in this statute does not refer to an Individual but a community. Article 34, paragraph 3 of the 1945 Constitution guarantees everyone's interest in obtaining health services when talking about the general population. Additionally, Article 152 paragraph 1 of Law Number 36 of 2009 concerning Health highlights the state's responsibility in providing health services, stating that: "The government, local government, and the community are responsible for preventing, controlling, and eradicating infectious diseases and their consequences."

The laws we have discussed show that the state's response to COVID-19 through policies in Indonesia is more valuable in providing health care obligations than the autonomous right to the body. The government's effort in making the COVID-19 Vaccine available should also be considered. Since the Vaccine is costly to produce, the Indonesian government has imported different types, including Sinovac, AstraZeneca, Sinopharm, Moderna, Pfizer, and Sputnik.

Nevertheless, the government should accelerate research in producing domestic Vaccines. Some stride is already being made with the emergence and development of the current Merah Putih vaccine through a collaboration between the Ministry of Research and Technology/National Research and Innovation Agency (Kemenristek/BRIN) with the Ministry of Health. This domestic Vaccine will help distant villages after pre-clinal and clinal trial periods, helping prevent the spread of the virus to remote areas.

The vaccination process can be hastened by following the pattern set by-elections, which takes only one day for the entire country. Instead of polling stations (TPS), the vaccine team can use Vaccine implementation place (TPV), vaccinating 100 people per TPV a day. The health workers

who inject the Vaccine into everyone can be recruited from some students in the health and medical faculties by providing them with education and technical guidance before going into the field.

### **3.2. Justification for the Enactment of the Autonomous Right to Refuse the Covid-19 Vaccine**

The state's implementation of a COVID-19 vaccine in accomplishing its obligation for providing health services is for the common good of all people. Legal science provides a balance point in implementing public policies without ignoring the essential rights of everyone.

According to the prevailing medical research, certain vaccines, such as Sinovac, cannot be given to people, including those who have a confirmed history of COVID-19, pregnant and lactating women, individuals under 18 years of age, those experiencing ARI symptoms such as cough/cold/shortness of breath in the last seven days, and those with blood pressure above 140/90. It should also not be given to people that have family members who are in close contact with or undergoing treatment due to COVID-19 disease, those under long-term active therapy for blood disorders, Systemic Autoimmune disease (SLE/Lupus, and have heart disease (heart failure/coronary heart disease). Additionally, individuals with Sjogren's, kidney disease, hypothyroidism due to autoimmune disease, Rheumatoid Arthritis, blood disorders, chronic digestive tract disease, cancer, and immune deficiency should not be vaccinated with Sinovac. Research is also indicated that recipients of blood products/transfusions, those with Diabetes Mellitus, have HIV (in certain conditions, the COVID-19 Vaccine can be given), have lung diseases such as asthma, COPD, and have tuberculosis should not be vaccinated with Sinovac (Fadlyana et al. 2021; World Health Organization (WHO) 2021).

Article 13, paragraph 3 of the Presidential Regulation Number 14 of 2021 on the Amendments to Presidential Regulation Number 99 of 2020, covers the rights of those who experience side effects of the COVID-19 Vaccine. The amendment done on the Vaccination Implementation in the Context of COVID-19 Pandemic Prevention (Last Amendment with Presidential Regulation No. 51/2021) states that "the target recipients of the COVID19 Vaccine who do not meet the criteria are excluded from the obligation as referred to in paragraph 21 following the indications of the available Vaccine."

Therefore, the law provision does not fully protect a person who cannot be vaccinated since each circulating Vaccine requires Standard Operating Procedures (SOP). However, there is no complete data on who cannot be vaccinated. Those with a clear track record of the disease from the upper-middle-class can be exempted from the Vaccine if it is unsafe. However, some lower-middle-class people have complained about inequality in receiving vaccinations due to a lack of accurate health checks. This person cannot be ignored during vaccination since they may become carriers of the virus and transmit it to others in the future.

Due to distrust in the administration of vaccines in the country, the government has issued a decree through Article 15 B of Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation stating the following: "(1) In the case of adverse side effects following COVID-19 vaccination, as referred to in Article 15 A paragraph (3) and in case the Vaccine cause a disability or death, the government will offer compensation. (2) The compensation, as referred to in paragraph (1), is awarded should the Vaccine result in disability or death, (3) Further provisions regarding the criteria, form and amount for compensation as indicated in paragraph (1) shall be stipulated by the Minister of Health after obtaining approval from the Minister of Finance."

Anti-vaccine groups can interpret the article for the provision of compensation by the state as unsafe because the government is anticipating causalities from the vaccinations. The law does not

hold health workers accountable for any vaccine eventualities, though they are the one who administers the drug. This situation presents a dilemma for the targeted vaccine recipients from rural areas and inner community groups, who care less about compensation if their bodies and lives are not valued. Therefore, the autonomous right over the body should not be enforced on this group. Nevertheless, the government proves accountable for the Vaccine's negative impact through compensation, with no legal recourse on health workers who make mistakes in injecting vaccines and providing a diagnosis. This serves as a warning and concern for future vaccine administration activities. Autonomy and personal life do not justify special treatment or protection of those who do not deserve to receive vaccines.

The principle of equality before the law should be balanced between vaccine recipients and givers. Though the government is quick to provide warnings to those refusing vaccines through Presidential Regulation on Vaccine Procurement and Vaccination Implementation in the Context of Handling the COVID-19 Pandemic, there are no criminal sanctions for vaccine givers when they err in diagnosing prospective vaccine recipients. For instance, Article 13 A paragraph 4 and 5 states that "(4) Any person who has been designated as the target recipient of the COVID-19 Vaccine and does not participate in the COVID-19 vaccination as referred to in paragraph (2) may be subject to administrative sanctions, such as (a). postponement or termination of the social security or assistance; (b). postponement or termination of government administration services; and (c). fine. The article also states that; (5) the administrative sanctions as referred to in paragraph (4) shall be imposed by the ministry, institution, regional government, or agency following their respective authorities. This article is closely followed by the criminal sanction in Article 13 B, which states that: "Everyone designated as the target recipient of the COVID-19 Vaccine, but does not follow the COVID-19 Vaccination as referred to in Article 13 A paragraph (2) and causes obstruction of the implementation of the COVID-19 spread prevention, will be given sanctions as referred to in Article 13 A paragraph (a) and may be imposed by the provisions of the law on Infectious Disease Outbreaks."

These problems will continue in the future during the vaccination period, as many people continue queuing to hunt for vaccines until health workers who provide vaccines inject up to hundreds of people. Even though the vaccine supplies are not sufficient for everyone, vaccine administration activities should be arranged in a place and time based on the neighborhood, village, or sub-district area. At the same time, it is necessary to add health workers to provide vaccine injections by recruiting students from health and medical personnel. Furthermore, regulation of vaccination should not be left only to Presidential Regulation. Still, there is a need to form a special law that governs the necessary sanctions for those refusing.

Moreover, there is no agreement in criminalizing those who refuse vaccination. Others argue that the Infectious Disease Outbreak and the Health Quarantine Laws were not meant to trap parties who reject government policies handling the COVID-19 pandemic. Another argument is that the regulations for handling the COVID-19 pandemic should not be formulated as a criminal offense, cause a health emergency, or be deterred from implementing the prevention of the spread of COVID-19 circumstances in question are difficult to prove. The regulation is focused on the material on prevention, showing that the emphasis is on acts rather than waiting for the consequences of resistance to government policies in health services.

#### **4. CONCLUSIONS AND SUGGESTIONS**

The main objective of Indonesian legal interest is implementing COVID-19 vaccination as the state's obligation of health services rather than maintaining autonomous rights over the body. This philosophy of prioritizing health service obligations is supported by philanthropic philosophy, the principle of the public interest, the theory of the welfare state law, and the proportionality of legal restrictions on rights in-laws and regulations. Autonomous rights over the body can be applied to citizens with limited conditions as long as they experience legitimate resistance to receiving COVID-19 vaccinations.

The COVID-19 vaccination requires special legislation in addition to the presidential regulations. The Covid-19 vaccination process restricts some rights for smooth and quick operations intended to save lives. This process cannot be left for the private sector alone to handle but should be governed by the state policy with the vaccination pattern based on the village or neighborhood area. The law should also balance the recruitment of vaccine givers from health and medical universities.

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Title: Antinomy settlement of legal interest between autonomous rights and obligations of health services against refusals of coronavirus disease 2019 vaccine: The case of Indonesia  
Author(s): Amir Ilyas, Amir Ilyas, Slamet Sampurno  
Corresponding Author: Amir Ilyas  
Affiliation of Corresponding Author: Hasanuddin University  
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Overall Judgement: Accept

The significance of the study lies in the fact that it aims to resolve the apparent contradiction that many countries face between the autonomous right over human's body and achieving public interest in receiving the COVID- 19 vaccine. This issue was discussed using a variety of approaches, including philosophical and legal ones.

The following are some comments and observations that can be made concerning this study:

1. For some reason, it was not immediately apparent to me that the researchers were defending a specific and clear hypothesis. On page 2 they stated that "The study established the reasons for prioritizing health services obligations to carry out vaccination while justifying reasons or exceptions for autonomous rights to resist the vaccine. And on page 5 stated "This paper aims to adopt restrictions on people's rights while considering their obligations. The autonomous right over one's body cannot take precedence over health care obligations". However, can the researchers clarify this assertion?
2. The insistence of the Indonesian Deputy Minister of Law and Human Rights on using the quarantine law as a legal basis for imposing penalties on people who refuse to take COVID-19 vaccines does not seem appropriate in my opinion. In this regard, the researchers were unsuccessful to address the main question that should be considered carefully; Is it possible to enact a law that would oblige individuals to be vaccinated, and if so, what would be its legal basis? Also, can international human rights law assist in solving this problem, depending on many influential international instruments such as the 1966 International Covenant on Civil and Political Rights and WHO guidelines and regulations.
4. It is worthwhile to note that in this pandemic the majority of countries have not explicitly announced or enacted any laws that impose criminal penalties intended to force individuals to receive vaccinations. As an example, they have been induced to do so through a variety of methods, including restrictions on free movement of employees and travelers and financial incentives. Therefore, Indonesia would benefit from following this approach rather than enacting legislation that imposes harsh penalties on people.
5. This study is lacking in some aspects, including defining some terms, such as the autonomous right over one's body in its legal and objective dimensions in national and international human rights law, as well as studying the laws and practices of neighboring countries.
6. Besides enacting specific legislation on vaccinations, which I do not agree with, the conclusion should include other soft measures to convince Indonesians to get vaccines.
6. Rephrasing a few paragraphs and proofreading the manuscript were also necessary.

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# Antinomy settlement of legal interest between autonomous rights and obligations of health services against refusals of coronavirus disease 2019 vaccine: The case of Indonesia

Amir Ilyas<sup>3</sup> & Slamet Sampurno<sup>4</sup>  
Hasanuddin University, Indonesia

## Abstract

*This study aimed to determine the legality of implementing COVID-19 vaccination and the individuals' independent right to reject it. A normative juridical approach, which entails primary legal materials (laws) and secondary legal materials (health and medical law literature) was used and the legal materials were analyzed qualitatively. Furthermore, the set standards on the two legal interests in the implementation of the COVID-19 vaccination were analyzed. The results showed that the vaccination process focuses on the health services obligation rather than on maintaining autonomous rights over the body. This is in line with the academic approach that follows altruistic philosophy, the principle of public interest, the theory of the welfare state law, and the proportionality of legal restrictions on rights in-laws and regulations. Furthermore, legislators should enact laws that govern vaccination. The vaccines should be administered per the village and neighborhood using trained and medical specialists.*

Keywords: COVID-19 Vaccination, Health Services, Autonomous Rights.

## Introduction

The Deputy Minister of Law and Human Rights, Eddy O.S. Hiariej, was quoted by several electronic and print media stating that “criminal sanctions and fines can be imposed on those who continue to refuse the COVID-19 vaccination.” The minister’s sentiment was in line with Article 39, paragraph 1 of Law No. 6 of 2018 concerning Health Quarantine. This law states that “everyone who does not comply with or hinders the implementation of health quarantine to cause a public health emergency can be punished with a maximum imprisonment of one year and/or a maximum fine of IDR 100 million.” Moreover, Article 9 Junction Article 15 paragraph 2 letter an of the Health Quarantine Act, states that everyone is obliged to comply with the implementation of health quarantine, including vaccination.

The government has also raised the punishment for refusing vaccination as an *ultimum remedium* to provide the last alternative in the pattern of implementation. It continues to prioritize administrative sanctions, seen by implementing the Large-Scale Social Restriction program (Adam et al., 2021). Instead of taking coercive measures against its citizens, the Indonesian government should rationally discuss the anti-vaccination groups to help them see why the Vaccine is mandatory.

This study uses a philosophical, theoretical, principle, and juridical-based approach to examine the correct course of action. Furthermore, the government can accelerate smooth COVID-19

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To help the anti-vaccination groups understand why vaccination is mandatory, the Indonesian government must rationally discuss the issue.

<sup>3</sup> Lecturer, Faculty of law, Hasanuddin University, Makassar, 90245, Indonesia. Email : [amir\\_fh\\_unhas@yahoo.com](mailto:amir_fh_unhas@yahoo.com), [wenlan195@gmail.com](mailto:wenlan195@gmail.com)

<sup>4</sup> Lecturer, Faculty of law, Hasanuddin University, Makassar, 90245, Indonesia. Email : [slametss\\_68@yahoo.com](mailto:slametss_68@yahoo.com)

vaccination in Indonesia by encouraging the philosophy of socialization among its ordinary citizens (Mottelson et al., 2021). The philosophy will encourage them to save themselves through government-based vaccination to save their loved ones from COVID-19 transmission.

There is no research focused on the legal implication of refusing the administration of COVID-19 Vaccine Kurniawan, (2021) on human rights in handling the COVID-19 Pandemic focused more on the value of implementing Large-Scale Social Restrictions (PSBB) program. They concluded that the government restriction program aimed to release the central government's responsibility to fulfill people's basic needs and livestock in the quarantine area. Handini, (2020) also used a human rights approach to study government policies in handling the COVID-19 Pandemic, focusing mainly on health workers' health and safety insurance rights (Tothmanikowski et al., 2021). The study established that these rights had not been realized due to the complexity of local government bureaucracy and unequal distribution of Personal Protective Equipment (PPE).

Supriyadi, (2020) analyzed government policies in dealing with the COVID-19 Pandemic from a forecast perspective. This research found that the government had failed to advocate for people's welfare. Basic needs were not fully addressed, and the legal framework for financial management in handling the COVID-19 Pandemic was not yet complete. These frameworks could govern the use of budget during the Pandemic without civil and criminal liability to avoid unnecessary errors. Furthermore, Maikel, (2021) examined the effects of refusal to abide by health protocols during the COVID-19 Pandemic and the normative application of criminal sanctions. However, it failed to conduct a diametrical study on the two legal interests used in government health services for the COVID-19 prevention.

The above studies did not focus on the antinomy of legal interest in the administration of COVID-19 vaccination. Therefore, this research is necessary to streamline government programs in facilitating COVID-19 vaccination. The study established the reasons for prioritizing health services obligations to carry out vaccination while justifying reasons or exceptions for autonomous rights to resist the Vaccine.

## Research Methods

### Research Type

This research is normative juridical research that employs a conceptual approach (Marzuki: 2010). It heavily relies on the theoretical study of the existing literature by connecting the problems to the subject of discussion. Additionally, the research analyzed legal issues, such as the antinomy of legal interests between autonomous rights over the body and health service obligations when refusing COVID-19 Vaccine.

### Legal Material

This research used primary and secondary legal materials, with the former including the 1945 Constitution, Law Number 36 of 2009 concerning Health, Law Number 39 of 1999 concerning Human Rights, and Presidential Regulation Number 14 of 2021 on the Amendments to Presidential Regulation Number 99 of 2020. The presidential Regulation was formulated to guide the Vaccination Procurement and Implementation to help citizens cope with the COVID-19 Pandemic. In contrast, the secondary legal materials were literature related to health and medical law.

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### **Collection Method**

The legal materials for the study were collected using library research. This involved conducting searches on laws and regulations, journals, books, and writings directly related to the problems examined.

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### **Analysis**

The research used qualitative analysis when examining the legal materials by describing the legal antinomy between the autonomous right to the body and the obligation of health services in the administration of COVID-19 vaccination. The study also used a legal conceptualization to obtain the main legal interest and justify one's right to refuse the administration of COVID-19 vaccination.

### **Analysis and Discussion**

#### ***C. Prioritizing Obligations of the Health Service by the State about the Autonomous Right to Refuse COVID-19 Vaccines***

Covid-19, also known as Coronavirus Disease-19, has affected people's lives for the last two years as it transmits across the globe. By January 28, 2021, there were 87,640,097 million positive cases, with 1,890,847 deaths in over 215 countries in the world (Kurniawan, 2021).

The emergence of the new "Delta" variant in India, Indonesia, and the surrounding countries has dealt a huge blow to the people. The statistics from the Task Force on the Acceleration of COVID-19 Kemenkes, (2021) show that the cumulative positive cases in July 2021 were 3,409,658. Most of these cases were from the new variant that killed many people in India. The rise in infection after normalizing the curve saw the government issue restrictive policies, such as the Community Activities Restrictions Enforcement (PPKM) program to reduce virus transmission.

Indonesia may manage the spread of the new variant due to the available vaccines from other countries. The vaccine arrival and quick implementation could help curb the spread and the effects of the new variant. Data from the Ministry of Health indicate that a total of 21,496,995 have been vaccinated to date (August 3, 2021). This accounts for 44.64% of the eligible population (48,148,817 people). The data is encouraging, with many Indonesians eager to participate in vaccination, as witnessed in long queues in private and public institutions. Nevertheless, some still refuse vaccination, even though the state bears the cost.

People are refusing vaccines for many reasons, including juridical reasons, religious reasons, and others who suspect the material to be *haram* (prohibited). Additionally, others refuse vaccination for safety reasons, fearing it will affect their health and result in death. The major legal challenge the state is facing towards vaccination is that everyone has autonomous rights over their bodies (Samsi & Jacobalis, 2005). The autonomous right to one's body is a fundamental human right that should not be interfered with unless there is a strong argument to do so (Brennan et al., 2007).

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The citizens' autonomous rights are included in Article 28 G paragraph 1 of the 1945 Constitution, which states that "Everyone has the right to protect personal, family, honor, dignity, and property under his control. This basic law also alludes to the right one has for a sense of security and protection from the threat of fear to do or not do something, considered a human right." Moreover, Article 5 paragraph 3 of Law no. 36/2009 on health shows that "everyone has the right to independently and responsibly determine the health services needed for them."

The autonomous rights referred to in the above laws do not stand alone in the legislation. These laws should be read with consideration to legal provisions mandating the state to form health service policies for every citizen. For instance, Article 34, paragraph 3 of the Constitution states that "The state is responsible for the provision of proper health care facilities and public service facilities." Article 14, paragraph 1 of Law no. 36/2009 on health also affirms that "The government is responsible for planning, regulating, organizing, fostering, and supervising the implementation of equitable and affordable health efforts for the community."

Based on the two legal paradigms mentioned above, there are two incompatibilities of legal interest between autonomous rights and health service obligations. The question implementers are which part of the legal interest should take precedence against the refusal of COVID-19 Vaccine? The research ascertains that the obligation of health services takes precedence over the autonomous right to body based on the following arguments:

First, it is based on an altruistic philosophical approach, which promotes togetherness between communities by providing help to others without expecting any favors (Fraser & Sterelny, 2015; Li, 2021). This philosophy is closely related to the flow of utilitarianism (Mitchell, 1987), considered the precedence to the principle of expediency, as popularized by Jeremy Bentham. The purpose of this law aims to provide happiness for as many people as possible. The study observed that this flow is not the result of social interaction but is innate from a person's birth. Everyone is born with the desire to preserve their life and endowed with good qualities to positively contribute to the surrounding environment. Therefore, the anti-COVID-19 stand pegged on the autonomous right on one's body may not be just if it endangers others. A person's right to their body should be inextricably linked with the external obligation to do good for others. It means that one's independence over the body cannot be used as an excuse to refuse the COVID-19 Vaccine without a basic reason since they should radiate kindness in protecting their surroundings. It is understood that the autonomous right to one's body and the state's obligation to provide health services are needed by human beings; therefore, they are integral units that cannot be separated from each other.

Second, it is based on the theory of the welfare state law, which carries the material law and the people's welfare. This law obligates the state to advance people's welfare through services, assistance, protection, and the prevention of social problems (Elviandri, 2019). The government's approach agrees with an old saying, "*Salus Populi suprema lex exsto*," used by monarch state. The saying can also be applied in a democratic government when it applies strict rules during an emergency (Faiz, 2020). For example, the government issues strict regulations during Covid-19, such as the Presidential Decree No. 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID -19) as a National Disaster.

The Indonesian government has issued policies to curb Covid-19 transmission and to provide health services through vaccines. A person infected by the coronavirus loses his autonomous right to the body and becomes of public interest. The government takes over the responsibility of providing essential health services for the public good. In theory, this law is derived from various state policies due to its obligation to prevent and curb the transmission of the COVID-19. These policies include regional quarantine (Aviariska, 2020), Large-Scale Social Restrictions (PSBB) (Suraya et al., 2020), and the Community Activities Restrictions Enforcement (PPKM)(Ilyas, 2021).

Third, the law is formulated using the legal principle approach. The principle used to bridge the antinomy of legal interest between the autonomous right to the body and the obligation to provide health services concerning the administration of the COVID-19 vaccination prioritizes public

interest over personal interest (*Bonum commune Bono private preferred debet*). Public interest is defined in Article 10 paragraph 1 letter G of Law Number 30 of 2014, which states that "the principle of public interest prioritizes the public welfare and benefit through aspirational, accommodating, selective, and not discriminatory laws." This definition indicates that public interest can be determined through people's will and by prioritizing services fairly when implementing public policies. The understanding of public interest obligates a citizen in contact with health services to implement COVID-19 vaccination to create a healthy life and environment. The reasoning behind this policy is that Covid-19 vaccination should be prioritized if it does not threaten the body, thus dismissing vaccine resistance that uses the autonomous right to the body. The study observed that defending autonomous rights often results in loss of lives, but following government direction on vaccination saves others' lives.

Fourth, the policies follow the juridical approach, resulting from the philosophical and theoretical reasoning of developing norm texts or imperative clauses (Hart, 1994). The statutory regulation that covers right formulation talks about citizens' rights and formulating known restrictions and obligations that should be fulfilled. These obligations and restrictions meet with the original rights that have been normalized at this time. Though Article 28 G paragraph 1 of the 1945 Constitution recognizes that everyone has autonomous rights over their bodies, these rights are limited through (Article 28 J paragraph 2 of the 1945 Constitution. The limitation guarantees the "recognition and respect of others' rights and freedoms by justly considering religious values, morals, security, and public order in a democratic society." Additional laws include Law Number 39 of 1999 on Human Rights highlighted in Article 69 paragraph 1, which states that: "Everyone is mandated to respect other people's rights, morals, ethics, and the order of life in society, nation and state." Furthermore, Article 69 paragraph 2 also emphasizes that: "Every human right creates a basic obligation and responsibility to respect the rights of fellow humans in return and that the Government must respect, protect, uphold and promote those rights."

This paper aims to adopt restrictions on people's rights while considering their obligations. The autonomous right over one's body cannot take precedence over health care obligations since the body in question can also injure other human bodies through a virus or pathogen transmission. The basis for this reasoning is that the virus hiding in an autonomous body cannot be made autonomous. Therefore, the state will follow the laws as stipulated in Article 28 H paragraph 1 of the 1945 Constitution, which states that: "Everyone has the right to live in physical and spiritual prosperity, in a good and healthy living environment and the right to health services." The "Everyone" as used in this statute does not refer to an Individual but a community. Article 34, paragraph 3 of the 1945 Constitution guarantees everyone's interest in obtaining health services when talking about the general population. Additionally, Article 152 paragraph 1 of Law Number 36 of 2009 concerning Health highlights the state's responsibility in providing health services, stating that: "The government, local government, and the community are responsible for preventing, controlling, and eradicating infectious diseases and their consequences."

The laws we have discussed show that the state's response to COVID-19 through policies in Indonesia is valuable in providing health care obligations than the autonomous right to the body. The government's effort in making the COVID-19 Vaccine available should also be considered. Since the Vaccine is costly to produce, the Indonesian government has imported different types, including Sinovac, AstraZeneca, Sinopharm, Moderna, Pfizer, and Sputnik.

Nevertheless, the government should accelerate research in producing domestic Vaccines. Some stride is already being made with the emergence and development of the current Merah Putih vaccine through a collaboration between the Ministry of Research and Technology/National

Research and Innovation Agency (Kemenristek/BRIN) with the Ministry of Health. This domestic Vaccine will help distant villages after pre-clinal and clinal trial periods, helping prevent the spread of the virus to remote areas.

The vaccination process can be hastened by following the pattern set by-elections, which takes only one day for the entire country. Instead of polling stations (TPS), the vaccine team can use Vaccine implementation place (TPV), vaccinating 100 people per TPV a day. The health workers who inject the Vaccine into everyone can be recruited from some students in the health and medical faculties by providing them with education and technical guidance before going into the field.

#### ***D. Justification for the Enactment of the Autonomous Right to Refuse the Covid-19 Vaccine***

The state's implementation of a COVID-19 vaccine in accomplishing its obligation for providing health services is for the common good of all people. Legal science provides a balance point in implementing public policies without ignoring the essential rights of everyone.

According to the prevailing medical research, certain vaccines, such as Sinovac, cannot be given to people, including those who have a confirmed history of COVID-19, pregnant and lactating women, individuals under 18 years of age, those experiencing ARI symptoms such as cough/cold/shortness of breath in the last seven days, and those with blood pressure above 140/90. It should also not be given to people that have family members who are in close contact with or undergoing treatment due to COVID-19 disease, those under long-term active therapy for blood disorders, Systemic Autoimmune disease (SLE/Lupus, and have heart disease (heart failure/coronary heart disease). Additionally, individuals with Sjogren's, kidney disease, hypothyroidism due to autoimmune disease, Rheumatoid Arthritis, blood disorders, chronic digestive tract disease, cancer, and immune deficiency should not be vaccinated with Sinovac. Research is also indicated that recipients of blood products/transfusions, those with Diabetes Mellitus, have HIV (in certain conditions, the COVID-19 Vaccine can be given), have lung diseases such as asthma, COPD, and have tuberculosis should not be vaccinated with Sinovac (Fadlyana et al., 2021; World Health Organization (WHO), 2021).

Article 13, paragraph 3 of the Presidential Regulation Number 14 of 2021 on the Amendments to Presidential Regulation Number 99 of 2020, covers the rights of those who experience side effects of the COVID-19 Vaccine. The amendment done on the Vaccination Implementation in the Context of COVID-19 Pandemic Prevention (Last Amendment with Presidential Regulation No. 51/2021) states that "the target recipients of the COVID19 Vaccine who do not meet the criteria are excluded from the obligation as referred to in paragraph 21 following the indications of the available Vaccine."

Therefore, the law provision does not fully protect a person who cannot be vaccinated since each circulating Vaccine requires Standard Operating Procedures (SOP). However, there is no complete data on who cannot be vaccinated. Those with a clear track record of the disease from the upper-middle-class can be exempted from the Vaccine if it is unsafe. However, some lower-middle-class people have complained about inequality in receiving vaccinations due to a lack of accurate health checks. This person cannot be ignored during vaccination since they may become carriers of the virus and transmit it to others in the future.

Due to distrust in the administration of vaccines in the country, the government has issued a decree through Article 15 B of Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation stating the following: "(1) In the case of adverse side effects following COVID-19 vaccination, as referred to in Article 15 A paragraph (3) and in case the Vaccine cause a disability or death, the government will offer compensation. (2) The

compensation, as referred to in paragraph (1), is awarded should the Vaccine result in disability or death, (3) Further provisions regarding the criteria, form and amount for compensation as indicated in paragraph (1) shall be stipulated by the Minister of Health after obtaining approval from the Minister of Finance.”

Anti-vaccine groups can interpret the article for the provision of compensation by the state as unsafe because the government is anticipating causalities from the vaccinations. The law does not hold health workers accountable for any vaccine eventualities, though they are the one who administers the drug. This situation presents a dilemma for the targeted vaccine recipients from rural areas and inner community groups, who care less about compensation if their bodies and lives are not valued. Therefore, the autonomous right over the body should not be enforced on this group. Nevertheless, the government proves accountable for the Vaccine's negative impact through compensation, with no legal recourse on health workers who make mistakes in injecting vaccines and providing a diagnosis. This serves as a warning and concern for future vaccine administration activities. Autonomy and personal life do not justify special treatment or protection of those who do not deserve to receive vaccines.

The principle of equality before the law should be balanced between vaccine recipients and givers. Though the government is quick to provide warnings to those refusing vaccines through Presidential Regulation on Vaccine Procurement and Vaccination Implementation in the Context of Handling the COVID-19 Pandemic, there are no criminal sanctions for vaccine givers when they err in diagnosing prospective vaccine recipients. For instance, Article 13 A paragraph 4 and 5 states that “(4) Any person who has been designated as the target recipient of the COVID-19 Vaccine and does not participate in the COVID-19 vaccination as referred to in paragraph (2) may be subject to administrative sanctions, such as (a). postponement or termination of the social security or assistance; (b). postponement or termination of government administration services; and (c). fine. The article also states that; (5) the administrative sanctions as referred to in paragraph (4) shall be imposed by the ministry, institution, regional government, or agency following their respective authorities. This article is closely followed by the criminal sanction in Article 13 B, which states that: "Everyone designated as the target recipient of the COVID-19 Vaccine, but does not follow the COVID-19 Vaccination as referred to in Article 13 A paragraph (2) and causes obstruction of the implementation of the COVID-19 spread prevention, will be given sanctions as referred to in Article 13 A paragraph (a) and may be imposed by the provisions of the law on Infectious Disease Outbreaks."

These problems will continue in the future during the vaccination period, as many people continue queuing to hunt for vaccines until health workers who provide vaccines inject up to hundreds of people. Even though the vaccine supplies are not sufficient for everyone, vaccine administration activities should be arranged in a place and time based on the neighborhood, village, or sub-district area. At the same time, it is necessary to add health workers to provide vaccine injections by recruiting students from health and medical personnel. Furthermore, regulation of vaccination should not be left only to Presidential Regulation. Still, there is a need to form a special law that governs the necessary sanctions for those refusing.

Moreover, there is no agreement in criminalizing those who refuse vaccination. Others argue that the Infectious Disease Outbreak and the Health Quarantine Laws were not meant to trap parties who reject government policies handling the COVID-19 Pandemic. Another argument is that the regulations for handling the COVID-19 Pandemic should not be formulated as a criminal offense, cause a health emergency, or be deterred from implementing the prevention of the spread of COVID-19 circumstances in question are difficult to prove. The regulation is focused on the

material on prevention, showing that the emphasis is on acts rather than waiting for the consequences of resistance to government policies in health services.

### **Conclusions and Suggestions**

The main objective of Indonesian legal interest is implementing COVID-19 vaccination as the state's obligation of health services rather than maintaining autonomous rights over the body. This philosophy of prioritizing health service obligations is supported by philanthropic philosophy, the principle of the public interest, the theory of the welfare state law, and the proportionality of legal restrictions on rights in-laws and regulations. Autonomous rights over the body can be applied to citizens with limited conditions as long as they experience legitimate resistance to receiving COVID-19 vaccinations.

The COVID-19 vaccination requires special legislation in addition to the presidential regulations. The Covid-19 vaccination process restricts some rights for smooth and quick operations intended to save lives. This process cannot be left for the private sector alone to handle but should be governed by the state policy with the vaccination pattern based on the village or neighborhood area. The law should also balance the recruitment of vaccine givers from health and medical universities.

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## Revisions and Amends

AMIR ILYAS <amir\_fh\_unhas@yahoo.com>

Kepada:IJCJS

Cc:curt.blakely@uwyo.edu

Jum, 11 Mar jam 16.58

Dear Editor of IJCJS Journal,

Please find enclosed the revised version of my paper that was adjusted to reviewer's comments.

I attached 3 files namely;

1. Review (A file with the answer of 6 questions from reviewer)
2. Main Document (A file containing the revised manuscript with active track changes in every single change that we made, integrated with comments from the reviewer that we reply inside the file)
3. Clean version\_Main Document (A file containing revised manuscript with all the comments deleted and all track changes accepted. For additional information this version already adjusted with writing format of the paper).

Please note that we have also uploaded these files to submission system

Thank you for the reviews and I hope, revisions I made meet your expectation.

Regards,  
Amir Ilyas

The significance of the study lies in the fact that it aims to resolve the apparent contradiction that many countries face between the autonomous right over human's body and achieving public interest in receiving the COVID-19 vaccine. This issue was discussed using a variety of approaches, including philosophical and legal ones.

The following are some comments and observations that can be made concerning this study:

1. For some reason, it was not immediately apparent to me that the researchers were defending a specific and clear hypothesis. On page 2 they stated that "The study established the reasons for prioritizing health services obligations to carry out vaccination while justifying reasons or exceptions for autonomous rights to resist the vaccine. And on page 5 stated "This paper aims to adopt restrictions on people's rights while considering their obligations. The autonomous right over one's body cannot take precedence over health care obligations". However, can the researchers clarify this assertion?

**Answer:**

We appreciate your inquiry and the chance given to us to explain. The statement is actually associated to the presence of two legal interests in the implementation of the Covid-19 vaccine; by relying on proportionate justice, or justice that does not bring harm, vaccinations are made mandatory for those who do not have any medical issue to receive vaccination. Meanwhile, persons who are unable to get vaccinations due to their physical condition (health concerns) maintain their autonomous rights.

I acknowledge that my language creates uncertainty since I do not provide medical grounds for the application of autonomous rights in my article. As a result, I chose to modify my statement slightly in order to provide information regarding the medical concern.

2. The insistence of the Indonesian Deputy Minister of Law and Human Rights on using the quarantine law as a legal basis for imposing penalties on people who refuse to take COVID-19 vaccines does not seem appropriate in my opinion. In this regard, the researchers were unsuccessful to address the main question that should be considered carefully; Is it possible to enact a law that would oblige individuals to be vaccinated, and if so, what would be its legal basis? Also, can international human rights law assist in solving this problem, depending on many influential international instruments such as the 1966 International Covenant on Civil and Political Rights and WHO guidelines and regulations.

**Answer:**

We appreciate your viewpoint. We think that enacting a legislation requiring vaccination is quite possible, so that there is a law that specifically regulates it. The a quo law does not discuss the legal basis in the past, but rather philosophical and theoretical considerations, philosophical considerations based on an altruistic philosophical approach (placing the public good ahead of personal interests), and theoretical considerations, specifically the welfare state conception.

Then, for legal purposes, it clearly refers to the 1945 Constitution of the Republic of Indonesia: first, as in Article 28 G paragraph 1, Article 28 J paragraph 2 and Article 34 paragraph 3 of the 1945 Constitution of the Republic of Indonesia; and second, as set in Article 69 paragraph 1 and paragraph 2 of the Human Rights Law, as well as Article 152 paragraph 1 of the Law. - Law Number 36 of 2009 concerning Health;

Furthermore, I believe that the International Covenant on Civil and Political Rights is insufficient to establish vaccine delivery as a state obligation to its citizens; rather, I believe that the International Covenant on Socio-cultural and Economic Rights, as ratified by Law No. 11/2005; in Article 12 of the ICESCR, is more appropriate.

Article 12 (1). The States parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. **The steps to be taken by the States Parties to the present Covenant in order to achieve the full realization of this right shall include those necessary to seek:** (a) Provisions for the reduction of the rates of stillbirth and child mortality and the development of children healthy; (b) Improvement of all aspects of environmental and industrial health; (c) Prevention, treatment and control of all infectious, endemic and other occupational diseases; (d) The creation of conditions which will ensure all medical care and attention in the event of a person's illness.

Meanwhile, the WHO recommends that "herd immunity may be established with a vaccination target of at least 70%."

3. It is worthwhile to note that in this pandemic the majority of countries have not explicitly announced or enacted any laws that impose criminal penalties intended to force individuals to receive vaccinations. As an example, they have been induced to do so through a variety of methods, including restrictions on free movement of employees and travelers and financial incentives. Therefore, Indonesia would benefit from following this approach rather than enacting legislation that imposes harsh penalties on people.

**Answer:** Indeed, planning for the future implementation of the law governing the vaccine is not by prioritizing the application of criminal law; rather, criminal law is a final remedy (*ultimum remedium*), and so this paper places a premium on developing social awareness of the vaccine's advantages first. If, after being told of the advantages, people continue to reject, despite the fact that the vaccination for them is also not resistant to his body (no health issue), then the criminal legislation will be enforced.

4. This study is lacking in some aspects, including defining some terms, such as the autonomous right over one's body in its legal and objective dimensions in national and international human rights law, as well as studying the laws and practices of neighboring countries.

**Answer:**

In fact, it is clear what autonomous rights are from a legal perspective as regulated in Article 28 G paragraph 1 of the 1945 Constitution of the Republic of Indonesia which affirms "Everyone has the right to personal protection, family, honor, dignity, and property under his control, and is entitled to a sense of security and protection from the threat of fear to do or not do something which is a human right."

In the medical world, the autonomous right is one of the principles that respects the patient's rights regarding consent to take action on the patient;

Regarding the practice of several countries related to this autonomous right, in America this autonomous right is often used as a justification for some states in legalizing abortion even though in practice it is denied by the prolife doctrine by those who are against abortion.

Regarding the implementation of vaccines, I think autonomous rights can be violated because it is more important to prioritize the rights of the collectivity than the rights of

individuals, while still accommodating those who are not eligible to receive vaccines for health reasons.

Regarding the imposition of criminal sanctions for everyone who does not want to be vaccinated, it can indeed be a comparison, such as France and the United States which are more aggressive in imprisoning their citizens if they refuse vaccination. In 2019, in the United States, the New York government passed a regulation that fined citizens who refused the measles vaccine.

Dov Fox, a professor of law and director of the Center for Health Policy and Bioethics at the University of San Diego, explained further, that it is true that the matter of disease related to physical health is a person's privacy, but for the sake of medical needs, public health far outweighs the rights and freedoms of the individual at stake.

Dov Fox's description clearly indicates a state of the disease that has a further contagion effect in other healthy humans. It is no longer solely engaged in the scope of individual rights, but has become a public right, so that it becomes the domain of the state to take on the role of forcing its citizens, for the sake of health services and mutual welfare.

5. Besides enacting specific legislation on vaccinations, which I do not agree with, the conclusion should include other soft measures to convince Indonesians to get vaccines.

**Answer:** I believe that a gentle approach is required, namely prioritizing socialization about the benefits of giving vaccines. The criminal law is final remedy (ultimum remedium). In this context, I propose in the future, if this criminal law is enforced, it will not result in criminal sanctions (imprisonment, fines) but rather action. What is the sanction? The individual must be vaccinated.

6. Rephrasing a few paragraphs and proofreading the manuscript were also necessary.

**Answer:** Thank you for your suggestion. The intended paragraph has been paraphrased and proofreading also already performed.

# Antinomy settlement of legal interest between autonomous rights and obligations of health services against refusals of coronavirus disease 2019 vaccine: The case of Indonesia

Amir Ilyas<sup>5</sup> & Slamet Sampurno<sup>6</sup>  
Hasanuddin University, Indonesia

## Abstract

This study aimed to determine the legality of implementing COVID-19 vaccination and the individuals' independent right to reject it. A normative juridical approach, which entails primary legal materials (laws) and secondary legal materials (health and medical law literature) was used and the legal materials were analyzed qualitatively. Furthermore, the set standards on the two legal interests in the implementation of the COVID-19 vaccination were analyzed. The results showed that the vaccination process focuses on the health services obligation rather than on maintaining autonomous rights over the body. This is in line with the academic approach that follows altruistic philosophy, the principle of public interest, the theory of the welfare state law, and the proportionality of legal restrictions on rights in-laws and regulations. Furthermore, legislators should enact laws that govern vaccination. The vaccines should be administered per the village and neighborhood using trained and medical specialists.

Keywords: COVID-19 Vaccination, Health Services, Autonomous Rights.

## Introduction

The Deputy Minister of Law and Human Rights, Eddy O.S. Hiariej, was quoted by several electronic and print media stating that “criminal sanctions and fines can be imposed on those who continue to refuse the COVID-19 vaccination.” The minister’s sentiment was in line with Article 39, paragraph 1 of Law No. 6 of 2018 concerning Health Quarantine. This law states that “everyone who does not comply with or hinders the implementation of health quarantine to cause a public health emergency can be punished with a maximum imprisonment of one year and/or a maximum fine of IDR 100 million.” Moreover, Article 9 Junction Article 15 paragraph 2 letter an of the Health Quarantine Act, states that everyone is obliged to comply with the implementation of health quarantine, including vaccination (Government of Indonesia 2018).

The government has also raised the punishment for refusing vaccination as a final remedy (*ultimum remedium*) to provide the last alternative in the pattern of implementation. It continues to prioritize administrative sanctions, seen by implementing the Large-Scale Social Restriction program (Adam et al. 2021; Kurniawati, Rochmah, and Laksono 2020). To help the anti-vaccination groups understand why vaccination is mandatory, the Indonesian government must rationally to have an open dialogue regarding this issue.

This study uses a philosophical, theoretical, principle, and juridical-based approach to examine the correct course of action. Furthermore, the government can accelerate smooth COVID-19

<sup>5</sup> Lecturer, Faculty of law, Hasanuddin University, Makassar, 90245, Indonesia. Email : [amir\\_fh\\_unhas@yahoo.com](mailto:amir_fh_unhas@yahoo.com), [wenlan195@gmail.com](mailto:wenlan195@gmail.com)

<sup>6</sup> Lecturer, Faculty of law, Hasanuddin University, Makassar, 90245, Indonesia. Email : [slametss\\_68@yahoo.com](mailto:slametss_68@yahoo.com)

**Commented [210]:** Final remedy (*ultimum remedium*)

**Commented [A11R10]:** Thank you for your advice, the change has been made and we used final remedy (*ultimum remedium*) as suggested. Also we remove the highlight.

**Commented [212]:** citation

**Commented [A13R12]:** Thank you for your review, we have added citation in this part and remove the highlight.

**Commented [214]:** Rephrasing I suggest;

To help the anti-vaccination groups understand why vaccination is mandatory, the Indonesian government must rationally discuss the issue.

**Commented [A15R14]:** Thank you for your suggestion. We decided to rephrasing and follow your suggestion and combined with your previous comment to change word discuss to “to have an open dialogue with” also we remove the highlight.

vaccination in Indonesia by encouraging the philosophy of socialization among its ordinary citizens (Mottelson et al. 2021). The philosophy will encourage them to save themselves through government-based vaccination to save their loved ones from COVID-19 transmission.

A thorough search of the relevant literature regarding the legal implication of declining to get the Covid-19 vaccination in Indonesia yielded no result; nevertheless, various studies have been conducted on how the COVID-19 Pandemic was handled. Kurniawan (2021) examined the human rights approach to dealing with the Covid-19 pandemic, with a particular emphasis on the need of adopting Large-Scale Social Restrictions (PSBB) programs. Additionally, Handini n.d. (2020) employed a human rights perspective to examine government policies related to the COVID-19 Pandemic, with a particular emphasis on health and safety insurance rights for health professionals. The study established that these rights were not achieved as a result of the complexity of local government bureaucracy and uneven distribution of Personal Protective Equipment (PPE).

Supriyadi. (2020) analyzed government policies in dealing with the COVID-19 Pandemic from a forecast perspective. This research found that the government had failed to advocate for people's welfare. Basic needs were not fully addressed, and the legal framework for financial management in handling the COVID-19 Pandemic was not yet complete. These frameworks could govern the use of budget during the Pandemic without civil and criminal liability to avoid unnecessary errors. Furthermore, Maikel, (2021) examined the effects of refusal to abide by health protocols during the COVID-19 Pandemic and the normative application of criminal sanctions. However, it failed to conduct a diametrical study on the two legal interests used in government health services for the COVID-19 prevention.

The above studies did not focus on the antinomy of legal interest in the administration of COVID-19 vaccination. Therefore, this research is necessary to streamline government programs in facilitating COVID-19 vaccination. The study established the reasons for prioritizing health services obligations to carry out vaccination while justifying reasons or exceptions for autonomous rights to resist the vaccine when medical reasons apply.

## **Research Methods**

### ***Research Type***

This research is normative juridical research that employs a conceptual approach (Marzuki: 2010). It heavily relies on the theoretical study of the existing literature by connecting the problems to the subject of discussion. Additionally, the research analyzed legal issues, such as the antinomy of legal interests between autonomous rights over the body and health service obligations when refusing COVID-19 Vaccine.

### ***Legal Material***

This research used primary and secondary legal materials, with the former including the 1945 Constitution, Law Number 36 of 2009 concerning Health, Law Number 39 of 199 concerning Human Rights, and Presidential Regulation Number 14 of 2021 on the Amendments to Presidential Regulation Number 99 of 2020. The presidential Regulation was formulated to guide the Vaccination Procurement and Implementation to help citizens cope with the COVID-19 Pandemic. In contrast, the secondary legal materials were literature related to health and medical law.

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## Analysis

The research used qualitative analysis when examining the legal materials by describing the legal antinomy between the autonomous right to the body and the obligation of health services in the administration of COVID-19 vaccination. The study also used a legal conceptualization to obtain the main legal interest and justify one's right to refuse the administration of COVID-19 vaccination.

## Analysis and Discussion

### E. Prioritizing Obligations of the Health Service by the State about the Autonomous Right to Refuse COVID-19 Vaccines

Covid-19, also known as Coronavirus Disease-19, has affected people's lives for the last two years as it transmits across the globe. By January 28, 2021, there were 87,640,097 million positive cases, with 1,890,847 deaths in over 215 countries in the world (Kurniawan 2021).

The emergence of the new "Delta" variant in India, Indonesia, and the surrounding countries has dealt a huge blow to the people (Alexandar et al. 2021). The statistics from the Task Force on the Acceleration of COVID-19 Kemenkes, (2021) show that the cumulative positive cases in July 2021 were 3,409,658. Most of these cases were from the new variant that killed many people in India (Sasikumar et al. 2020). The rise in infection after normalizing the curve saw the government issue restrictive policies, such as the Community Activities Restrictions Enforcement (PPKM) program to reduce virus transmission.

Indonesia may manage the spread of the new variant due to the available vaccines from other countries. The vaccine arrival and quick implementation could help curb the spread and the effects of the new variant. Data from the Ministry of Health indicate that a total of 21,496,995 have been vaccinated to date (August 3, 2021). This accounts for 444.64% of the eligible population (48,148,817 people). The data is encouraging, with many Indonesians eager to participate in vaccination, as witnessed in long queues in private and public institutions. Nevertheless, some still refuse vaccination, even though the state bears the cost.

People are refusing vaccines for many reasons, including juridical reasons, religious reasons, and others who suspect the material to be *haram* (prohibited). Additionally, others refuse vaccination for safety reasons, fearing it will affect their health and result in death. The major legal challenge the state is facing towards vaccination is that everyone has autonomous rights over their bodies (Samsi and Jacobalis 2005). The autonomous right to one's body is a fundamental human right that should not be interfered with unless there is a strong argument to do so (Brennan, Carr, and Cousins 2007; Office of the High Commissioner Human Rights 2011).

The citizens' autonomous rights are included in Article 28 G paragraph 1 of the 1945 Constitution, which states that "Everyone has the right to protect personal, family, honor, dignity, and property under his control. This basic law also alludes to the right one has for a sense of security and protection from the threat of fear to do or not do something, considered a human right." Moreover, Article 5 paragraph 3 of Law no. 36/2009 on health shows that "everyone has the right to independently and responsibly determine the health services needed for them."

The autonomous rights referred to in the above laws do not stand alone in the legislation. These laws should be read with consideration to legal provisions mandating the state to form health service policies for every citizen. For instance, Article 34, paragraph 3 of the Constitution states that "The state is responsible for the provision of proper health care facilities and public service facilities." Article 14, paragraph 1 of Law no. 36/2009 on health also affirms that "The government

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**Commented [218]:** Referencing international human rights norms is very important in this context

**Commented [A19]:** Thankyou. We accept the insertion to add word "basic"

is responsible for planning, regulating, organizing, fostering, and supervising the implementation of equitable and affordable health efforts for the community."

Based on the two legal paradigms mentioned above, there are two incompatibilities of legal interest between autonomous rights and health service obligations. The question implementers are which part of the legal interest should take precedence against the refusal of COVID-19 Vaccine? The research ascertains that the obligation of health services takes precedence over the autonomous right to body based on the following arguments:

First, it is based on an altruistic philosophical approach, which promotes togetherness between communities by providing help to others without expecting any favors (Fraser and Sterelny 2015; Li 2021). This philosophy is closely related to the flow of utilitarianism (Mitchell 1987), considered the precedence to the principle of expediency, as popularized by Jeremy Bentham (Quinn 2017). The purpose of this law aims to provide happiness for as many people as possible. The study observed that this flow is not the result of social interaction but is innate from a person's birth. Everyone is born with the desire to preserve their life and endowed with good qualities to positively contribute to the surrounding environment. Therefore, the anti-COVID-19 stand pegged on the autonomous right on one's body may not be just if it endangers others. A person's right to their body should be inextricably linked with the external obligation to do good for others. It means that one's independence over the body cannot be used as an excuse to refuse the COVID-19 Vaccine without a basic reason since they should radiate kindness in protecting their surroundings. It is understood that the autonomous right to one's body and the state's obligation to provide health services are needed by human beings; therefore, they are integral units that cannot be separated from each other.

Second, it is based on the theory of the welfare state law, which carries the material law and the people's welfare. This law obligates the state to advance people's welfare through services, assistance, protection, and the prevention of social problems (Elviandri 2019). The government's approach agrees with an old saying, "*Salus Populi suprema lex exsto*," used by monarch state. The saying can also be applied in a democratic government when it applies strict rules during an emergency (Faiz 2020). For example, the government issues strict regulations during Covid-19, such as the Presidential Decree No. 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID -19) as a National Disaster.

The Indonesian government has issued policies to curb Covid-19 transmission and to provide health services through vaccines. A person infected by the coronavirus loses his autonomous right to the body and becomes of public interest. The government takes over the responsibility of providing essential health services for the public good. In theory, this law is derived from various state policies due to its obligation to prevent and curb the transmission of the COVID-19. These policies include regional quarantine (Aviariska 2020), Large-Scale Social Restrictions (PSBB) (Suraya et al. 2020), and the Community Activities Restrictions Enforcement (PPKM)(Ilyas 2021).

Third, the law is formulated using the legal principle approach. The principle used to bridge the antinomy of legal interest between the autonomous right to the body and the obligation to provide health services concerning the administration of the COVID-19 vaccination prioritizes public interest over personal interest (*Bonum commune Bono private preferred debit*). Public interest is defined in Article 10 paragraph 1 letter G of Law Number 30 of 2014, which states that "the principle of public interest prioritizes the public welfare and benefit through aspirational, accommodating, selective, and not discriminatory laws." This definition indicates that public interest can be determined through people's will and by prioritizing services fairly when implementing public policies. The understanding of public interest obligates a citizen in contact

with health services to implement COVID-19 vaccination to create a healthy life and environment. The reasoning behind this policy is that Covid-19 vaccination should be prioritized if it does not threaten the body, thus dismissing vaccine resistance that uses the autonomous right to the body. The study observed that defending autonomous rights often results in loss of lives, but following government direction on vaccination saves others' lives.

Fourth, the policies follow the juridical approach, resulting from the philosophical and theoretical reasoning of developing norm texts or imperative clauses (Hart 1994). The statutory regulation that covers right formulation talks about citizens' rights and formulating known restrictions and obligations that should be fulfilled. These obligations and restrictions meet with the original rights that have been normalized at this time. Though Article 28 G paragraph 1 of the 1945 Constitution recognizes that everyone has autonomous rights over their bodies, these rights are limited through (Article 28 J paragraph 2 of the 1945 Constitution. The limitation guarantees the "recognition and respect of others' rights and freedoms by justly considering religious values, morals, security, and public order in a democratic society." Additional laws include Law Number 39 of 1999 on Human Rights highlighted in Article 69 paragraph 1, which states that: "Everyone is mandated to respect other people's rights, morals, ethics, and the order of life in society, nation and state." Furthermore, Article 69 paragraph 2 also emphasizes that: "Every human right creates a basic obligation and responsibility to respect the rights of fellow humans in return and that the Government must respect, protect, uphold and promote those rights."

This paper aims to adopt restrictions on people's rights while considering their obligations. The autonomous right over one's body cannot take precedence over health care obligations since the body in question can also injure other human bodies through a virus or pathogen transmission. The basis for this reasoning is that the virus hiding in an autonomous body cannot be made autonomous. Therefore, the state will follow the laws as stipulated in Article 28 H paragraph 1 of the 1945 Constitution, which states that: "Everyone has the right to live in physical and spiritual prosperity, in a good and healthy living environment and the right to health services." The "Everyone" as used in this statute does not refer to an Individual but a community. Article 34, paragraph 3 of the 1945 Constitution guarantees everyone's interest in obtaining health services when talking about the general population. Additionally, Article 152 paragraph 1 of Law Number 36 of 2009 concerning Health highlights the state's responsibility in providing health services, stating that: "The government, local government, and the community are responsible for preventing, controlling, and eradicating infectious diseases and their consequences."

The laws we have discussed show that the state's response to COVID-19 through policies in Indonesia is valuable in providing health care obligations than the autonomous right to the body. The government's effort in making the COVID-19 Vaccine available should also be considered. Since the Vaccine is costly to produce, the Indonesian government has imported different types, including Sinovac, AstraZeneca, Sinopharm, Moderna, Pfizer, and Sputnik.

Nevertheless, the government should accelerate research in producing domestic Vaccines. Some stride is already being made with the emergence and development of the current Merah Putih vaccine through a collaboration between the Ministry of Research and Technology/National Research and Innovation Agency (Kemenristek/BRIN) with the Ministry of Health. This domestic Vaccine will help distant villages after pre-clinal and clinal trial periods, helping prevent the spread of the virus to remote areas.

The vaccination process can be hastened by following the pattern set by-elections, which takes only one day for the entire country. Instead of polling stations (TPS), the vaccine team can use Vaccine implementation place (TPV), vaccinating 100 people per TPV a day. The health workers

**Commented [A20]:** Thank you for highlighted this part. We have already fix the confusion by slightly modify the sentence in page 2. Also, we remove the highlight.

who inject the Vaccine into everyone can be recruited from some students in the health and medical faculties by providing them with education and technical guidance before going into the field.

***F. Justification for the Enactment of the Autonomous Right to Refuse the Covid-19 Vaccine***

The state's implementation of a COVID-19 vaccine in accomplishing its obligation for providing health services is for the common good of all people. Legal science provides a balance point in implementing public policies without ignoring the essential rights of everyone.

According to the prevailing medical research, certain vaccines, such as Sinovac, cannot be given to people, including those who have a confirmed history of COVID-19, pregnant and lactating women, individuals under 18 years of age, those experiencing ARI symptoms such as cough/cold/shortness of breath in the last seven days, and those with blood pressure above 140/90. It should also not be given to people that have family members who are in close contact with or undergoing treatment due to COVID-19 disease, those under long-term active therapy for blood disorders, Systemic Autoimmune disease (SLE/Lupus, and have heart disease (heart failure/coronary heart disease). Additionally, individuals with Sjogren's, kidney disease, hypothyroidism due to autoimmune disease, Rheumatoid Arthritis, blood disorders, chronic digestive tract disease, cancer, and immune deficiency should not be vaccinated with Sinovac. Research is also indicated that recipients of blood products/transfusions, those with Diabetes Mellitus, have HIV (in certain conditions, the COVID-19 Vaccine can be given), have lung diseases such as asthma, COPD, and have tuberculosis should not be vaccinated with Sinovac (Fadlyana et al. 2021; World Health Organization (WHO) 2021).

Article 13, paragraph 3 of the Presidential Regulation Number 14 of 2021 on the Amendments to Presidential Regulation Number 99 of 2020, covers the rights of those who experience side effects of the COVID-19 Vaccine. The amendment done on the Vaccination Implementation in the Context of COVID-19 Pandemic Prevention (Last Amendment with Presidential Regulation No. 51/2021) states that "the target recipients of the COVID19 Vaccine who do not meet the criteria are excluded from the obligation as referred to in paragraph 21 following the indications of the available Vaccine."

Therefore, the law provision does not fully protect a person who cannot be vaccinated since each circulating Vaccine requires Standard Operating Procedures (SOP). However, there is no complete data on who cannot be vaccinated. Those with a clear track record of the disease from the upper-middle-class can be exempted from the Vaccine if it is unsafe. However, some lower-middle-class people have complained about inequality in receiving vaccinations due to a lack of accurate health checks. This person cannot be ignored during vaccination since they may become carriers of the virus and transmit it to others in the future.

Due to distrust in the administration of vaccines in the country, the government has issued a decree through Article 15 B of Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation stating the following: "(1) In the case of adverse side effects following COVID-19 vaccination, as referred to in Article 15 A paragraph (3) and in case the Vaccine cause a disability or death, the government will offer compensation. (2) The compensation, as referred to in paragraph (1), is awarded should the Vaccine result in disability or death, (3) Further provisions regarding the criteria, form and amount for compensation as indicated in paragraph (1) shall be stipulated by the Minister of Health after obtaining approval from the Minister of Finance."

Anti-vaccine groups can interpret the article for the provision of compensation by the state as unsafe because the government is anticipating causalities from the vaccinations. The law does not

hold health workers accountable for any vaccine eventualities, though they are the one who administers the drug. This situation presents a dilemma for the targeted vaccine recipients from rural areas and inner community groups, who care less about compensation if their bodies and lives are not valued. Therefore, the autonomous right over the body should not be enforced on this group. Nevertheless, the government proves accountable for the Vaccine's negative impact through compensation, with no legal recourse on health workers who make mistakes in injecting vaccines and providing a diagnosis. This serves as a warning and concern for future vaccine administration activities. Autonomy and personal life do not justify special treatment or protection of those who do not deserve to receive vaccines.

The principle of equality before the law should be balanced between vaccine recipients and givers. Though the government is quick to provide warnings to those refusing vaccines through Presidential Regulation on Vaccine Procurement and Vaccination Implementation in the Context of Handling the COVID-19 Pandemic, there are no criminal sanctions for vaccine givers when they err in diagnosing prospective vaccine recipients. For instance, Article 13 A paragraph 4 and 5 states that "(4) Any person who has been designated as the target recipient of the COVID-19 Vaccine and does not participate in the COVID-19 vaccination as referred to in paragraph (2) may be subject to administrative sanctions, such as (a). postponement or termination of the social security or assistance; (b). postponement or termination of government administration services; and (c). fine. The article also states that; (5) the administrative sanctions as referred to in paragraph (4) shall be imposed by the ministry, institution, regional government, or agency following their respective authorities. This article is closely followed by the criminal sanction in Article 13 B, which states that: "Everyone designated as the target recipient of the COVID-19 Vaccine, but does not follow the COVID-19 Vaccination as referred to in Article 13 A paragraph (2) and causes obstruction of the implementation of the COVID-19 spread prevention, will be given sanctions as referred to in Article 13 A paragraph (a) and may be imposed by the provisions of the law on Infectious Disease Outbreaks."

These problems will continue in the future during the vaccination period, as many people continue queuing to hunt for vaccines until health workers who provide vaccines inject up to hundreds of people. Even though the vaccine supplies are not sufficient for everyone, vaccine administration activities should be arranged in a place and time based on the neighborhood, village, or sub-district area. At the same time, it is necessary to add health workers to provide vaccine injections by recruiting students from health and medical personnel. Furthermore, regulation of vaccination should not be left only to Presidential Regulation. Still, there is a need to form a special law that governs the necessary sanctions for those refusing.

Moreover, there is no agreement in criminalizing those who refuse vaccination. Others argue that the Infectious Disease Outbreak and the Health Quarantine Laws were not meant to trap parties who reject government policies handling the COVID-19 Pandemic. Another argument is that the regulations for handling the COVID-19 Pandemic should not be formulated as a criminal offense, cause a health emergency, or be deterred from implementing the prevention of the spread of COVID-19 circumstances in question are difficult to prove. The regulation is focused on the material on prevention, showing that the emphasis is on acts rather than waiting for the consequences of resistance to government policies in health services.

## **Conclusions and Suggestions**

The main objective of Indonesian legal interest is implementing COVID-19 vaccination as the state's obligation of health services rather than maintaining autonomous rights over the body. This philosophy of prioritizing health service obligations is supported by philanthropic philosophy, the principle of the public interest, the theory of the welfare state law, and the proportionality of legal restrictions on rights in-laws and regulations. Autonomous rights over the body can be applied to citizens with limited conditions as long as they experience legitimate resistance to receiving COVID-19 vaccinations.

The COVID-19 vaccination requires special legislation in addition to the presidential regulations. The Covid-19 vaccination process restricts some rights for smooth and quick operations intended to save lives. This process cannot be left for the private sector alone to handle but should be governed by the state policy with the vaccination pattern based on the village or neighborhood area. The law should also balance the recruitment of vaccine givers from health and medical universities.

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**Author(s)** Amir Ilyas (Hasanuddin University) (Submitter, Corresponding Author\*)  
Amir Ilyas (Hasanuddin University, Law)  
Slamet Sampurno (Hasanuddin University)

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# ANTINOMY SETTLEMENT OF LEGAL INTEREST BETWEEN AUTONOMOUS RIGHTS AND OBLIGATIONS OF HEALTH SERVICES AGAINST REFUSALS OF CORONAVIRUS DISEASE 2019 VACCINE: THE CASE OF INDONESIA

Amir Ilyas<sup>7</sup> & Slamet Sampurno<sup>8</sup>  
Hasanuddin University, Indonesia

## ABSTRACT

*This study aimed to determine the legality of implementing COVID-19 vaccination and the individuals' independent right to reject it. A normative juridical approach, which entails primary legal materials (laws) and secondary legal materials (health and medical law literature) was used and the legal materials were analyzed qualitatively. Furthermore, the set standards on the two legal interests in the implementation of the COVID-19 vaccination were analyzed. The results showed that the vaccination process focuses on the health services obligation rather than on maintaining autonomous rights over the body. This is in line with the academic approach that follows altruistic philosophy, the principle of public interest, the theory of the welfare state law, and the proportionality of legal restrictions on rights in-laws and regulations. Furthermore, legislators should enact laws that govern vaccination. The vaccines should be administered per the village and neighborhood using trained and medical specialists.*

**Keywords**— COVID-19 Vaccination, Health Services, Autonomous Rights.

## 1. INTRODUCTION

The Deputy Minister of Law and Human Rights, Eddy O.S. Hiariej, was quoted by several electronic and print media stating that “criminal sanctions and fines can be imposed on those who continue to refuse the COVID-19 vaccination.” The minister’s sentiment was in line with Article 39, paragraph 1 of Law No. 6 of 2018 concerning Health Quarantine. This law states that “everyone who does not comply with or hinders the implementation of health quarantine from causing a public health emergency can be punished with a maximum imprisonment of one year and/or a maximum fine of IDR 100 million.” Moreover, Article 9 Junction Article 15 paragraph 2 letter an of the Health Quarantine Act, states that everyone is obliged to comply with the implementation of health quarantine, including vaccination (Government of Indonesia 2018).

The government has also raised the punishment for refusing vaccination as a final remedy (*ultimum remedium*) to provide the last alternative in the pattern of implementation. It continues to prioritize administrative sanctions, seen by implementing the Large-Scale Social Restriction program (Adam et al. 2021; Kurniawati, Rochmah, and Laksono 2020). To help the anti-vaccination groups understand why vaccination is mandatory, the Indonesian government must rationally have an open dialogue regarding this issue.

This study uses a philosophical, theoretical, principle, and juridical-based approach to examine the correct course of action. Furthermore, the government can accelerate smooth COVID-19

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<sup>7</sup> Lecturer, Faculty of law, Hasanuddin University, Makassar, 90245, Indonesia. Email : [amir\\_fh\\_unhas@yahoo.com](mailto:amir_fh_unhas@yahoo.com), [wenlan195@gmail.com](mailto:wenlan195@gmail.com)

<sup>8</sup> Lecturer, Faculty of law, Hasanuddin University, Makassar, 90245, Indonesia. Email: [slametss\\_68@yahoo.com](mailto:slametss_68@yahoo.com)

vaccination in Indonesia by encouraging the philosophy of socialization among its ordinary citizens (Mottelson et al. 2021). The philosophy will encourage them to save themselves through government-based vaccination to save their loved ones from COVID-19 transmission.

A thorough search of the relevant literature regarding the legal implication of declining to get the Covid-19 vaccination in Indonesia yielded no result; nevertheless, various studies have been conducted on how the COVID-19 pandemic was handled. Kurniawan (2021) examined the human rights approach to dealing with the Covid-19 pandemic, with a particular emphasis on the need of adopting Large-Scale Social Restrictions (PSBB) programs. Additionally, Handini n.d. (2020) employed a human rights perspective to examine government policies related to the COVID-19 pandemic, with a particular emphasis on health and safety insurance rights for health professionals. The study established that these rights were not achieved as a result of the complexity of local government bureaucracy and uneven distribution of Personal Protective Equipment (PPE).

Supriyadi, (2020) analyzed government policies in dealing with the COVID-19 pandemic from a forecast perspective. This research found that the government had failed to advocate for people's welfare. Basic needs were not fully addressed, and the legal framework for financial management in handling the COVID-19 pandemic was not yet complete. These frameworks could govern the use of budget during the pandemic without civil and criminal liability to avoid unnecessary errors. Furthermore, Maikel, (2021) examined the effects of refusal to abide by health protocols during the COVID-19 pandemic and the normative application of criminal sanctions. However, it failed to conduct a diametrical study on the two legal interests used in government health services for the COVID-19 prevention.

The above studies did not focus on the antinomy of legal interest in the administration of COVID-19 vaccination. Therefore, this research is necessary to streamline government programs in facilitating COVID-19 vaccination. The study established the reasons for prioritizing health services obligations to carry out vaccination while justifying reasons or exceptions for autonomous rights to resist the vaccine when medical reasons apply.

## **2. RESEARCH METHODS**

### **2.1. Research Type**

This research is normative juridical research that employs a conceptual approach (Marzuki: 2010). It heavily relies on the theoretical study of the existing literature by connecting the problems to the subject of discussion. Additionally, the research analyzed legal issues, such as the antinomy of legal interests between autonomous rights over the body and health service obligations when refusing COVID-19 Vaccine.

### **2.2. Legal Material**

This research used primary and secondary legal materials, with the former including the 1945 Constitution, Law Number 36 of 2009 concerning Health, Law Number 39 of 199 concerning Human Rights, and Presidential Regulation Number 14 of 2021 on the Amendments to Presidential Regulation Number 99 of 2020. The presidential regulation was formulated to guide the Vaccination Procurement and Implementation to help citizens cope with the COVID-19 pandemic. In contrast, the secondary legal materials were literature related to health and medical law.

### **2.3. Analysis**

The research used qualitative analysis when examining the legal materials by describing the legal antinomy between the autonomous right to the body and the obligation of health services in the administration of COVID-19 vaccination. The study also used a legal conceptualization to obtain the main legal interest and justify one's right to refuse the administration of COVID-19 vaccination.

### 3. ANALYSIS AND DISCUSSION

#### 3.1. Prioritizing Obligations of the Health Service by the State about the Autonomous Right to Refuse COVID-19 Vaccines

Covid-19, also known as Coronavirus Disease-19, has affected people's lives for the last two years as it transmits across the globe. By January 28, 2021, there were 87,640,097 million positive cases, with 1,890,847 deaths in over 215 countries in the world (Kurniawan 2021).

The emergence of the new "Delta" variant in India, Indonesia, and the surrounding countries have dealt a huge blow to the people (Alexandar et al. 2021). The statistics from the Task Force on the Acceleration of COVID-19 Kemenkes, (2021) show that the cumulative positive cases in July 2021 were 3,409,658. Most of these cases were from the new variant that killed many people in India (Sasikumar et al. 2020). The rise in infection after normalizing the curve saw the government issue restrictive policies, such as the Community Activities Restrictions Enforcement (PPKM) program to reduce virus transmission.

Indonesia may manage the spread of the new variant due to the available vaccines from other countries. The vaccine arrival and quick implementation could help curb the spread and the effects of the new variant. Data from the Ministry of Health indicate that a total of 21,496,995 have been vaccinated to date (August 3, 2021). This accounts for 444.64% of the eligible population (48,148,817 people). The data is encouraging, with many Indonesians eager to participate in vaccination, as witnessed in long queues in private and public institutions. Nevertheless, some still refuse vaccination, even though the state bears the cost.

People are refusing vaccines for many reasons, including juridical reasons, religious reasons, and others who suspect the material to be *haram* (prohibited). Additionally, others refuse vaccination for safety reasons, fearing it will affect their health and result in death. The major legal challenge the state is facing towards vaccination is that everyone has autonomous rights over their bodies (Samsi and Jacobalis 2005). The autonomous right to one's body is a fundamental human right that should not be interfered with unless there is a strong argument to do so (Brennan, Carr, and Cousins 2007; Office of the High Commissioner Human Rights 2011).

The citizens' autonomous rights are included in Article 28 G paragraph 1 of the 1945 Constitution, which states that "Everyone has the right to protect personal, family, honor, dignity, and property under his control. This basic law also alludes to the right one has for a sense of security and protection from the threat of fear to do or not do something, considered a human right." Moreover, Article 5 paragraph 3 of Law no. 36/2009 on health shows that "everyone has the right to independently and responsibly determine the health services needed for them."

The autonomous rights referred to in the above laws do not stand alone in the legislation. These laws should be read with consideration to legal provisions mandating the state to form health service policies for every citizen. For instance, Article 34, paragraph 3 of the Constitution states that "The state is responsible for the provision of proper health care facilities and public service facilities." Article 14, paragraph 1 of Law no. 36/2009 on health also affirms that "The government

is responsible for planning, regulating, organizing, fostering, and supervising the implementation of equitable and affordable health efforts for the community."

Based on the two legal paradigms mentioned above, there are two incompatibilities of legal interest between autonomous rights and health service obligations. The question implementers are which part of the legal interest should take precedence against the refusal of COVID-19 Vaccine? The research ascertains that the obligation of health services takes precedence over the autonomous right to body based on the following arguments:

First, it is based on an altruistic philosophical approach, which promotes togetherness between communities by providing help to others without expecting any favors (Fraser and Sterelny 2015; Li 2021). This philosophy is closely related to the flow of utilitarianism (Mitchell 1987), considered the precedence to the principle of expediency, as popularized by Jeremy Bentham (Quinn 2017). The purpose of this law aims to provide happiness for as many people as possible. The study observed that this flow is not the result of social interaction but is innate from a person's birth. Everyone is born with the desire to preserve their life and endowed with good qualities to positively contribute to the surrounding environment. Therefore, the anti-COVID-19 stand pegged on the autonomous right on one's body may not be just if it endangers others. A person's right to their body should be inextricably linked with the external obligation to do good for others. It means that one's independence over the body cannot be used as an excuse to refuse the COVID-19 Vaccine without a basic reason since they should radiate kindness in protecting their surroundings. It is understood that the autonomous right to one's body and the state's obligation to provide health services are needed by human beings; therefore, they are integral units that cannot be separated from each other.

Second, it is based on the theory of the welfare state law, which carries the material law and the people's welfare. This law obligates the state to advance people's welfare through services, assistance, protection, and the prevention of social problems (Elviandri 2019). The government's approach agrees with an old saying, "*Salus Populi suprema lex exsto*," used by monarch state. The saying can also be applied in a democratic government when it applies strict rules during an emergency (Faiz 2020). For example, the government issues strict regulations during Covid-19, such as the Presidential Decree No. 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID -19) as a National Disaster.

The Indonesian government has issued policies to curb Covid-19 transmission and to provide health services through vaccines. A person infected by the coronavirus loses his autonomous right to the body and becomes of public interest. The government takes over the responsibility of providing essential health services for the public good. In theory, this law is derived from various state policies due to its obligation to prevent and curb the transmission of the COVID-19. These policies include regional quarantine (Aviariska 2020), Large-Scale Social Restrictions (PSBB) (Suraya et al. 2020), and the Community Activities Restrictions Enforcement (PPKM)(Ilyas 2021).

Third, the law is formulated using the legal principle approach. The principle used to bridge the antinomy of legal interest between the autonomous right to the body and the obligation to provide health services concerning the administration of the COVID-19 vaccination prioritizes public interest over personal interest (*Bonum commune Bono private preferred debit*). Public interest is defined in Article 10 paragraph 1 letter G of Law Number 30 of 2014, which states that "the principle of public interest prioritizes the public welfare and benefit through aspirational, accommodating, selective, and not discriminatory laws." This definition indicates that public interest can be determined through people's will and by prioritizing services fairly when implementing public policies. The understanding of public interest obligates a citizen in contact

with health services to implement COVID-19 vaccination to create a healthy life and environment. The reasoning behind this policy is that Covid-19 vaccination should be prioritized if it does not threaten the body, thus dismissing vaccine resistance that uses the autonomous right to the body. The study observed that defending autonomous rights often results in loss of lives, but following government direction on vaccination saves others' lives.

Fourth, the policies follow the juridical approach, resulting from the philosophical and theoretical reasoning of developing norm texts or imperative clauses (Hart 1994). The statutory regulation that covers right formulation talks about citizens' rights and formulating known restrictions and obligations that should be fulfilled. These obligations and restrictions meet with the original rights that have been normalized at this time. Though Article 28 G paragraph 1 of the 1945 Constitution recognizes that everyone has autonomous rights over their bodies, these rights are limited through (Article 28 J paragraph 2 of the 1945 Constitution. The limitation guarantees the "recognition and respect of others' rights and freedoms by justly considering religious values, morals, security, and public order in a democratic society." Additional laws include Law Number 39 of 1999 on Human Rights highlighted in Article 69 paragraph 1, which states that: "Everyone is mandated to respect other people's rights, morals, ethics, and the order of life in society, nation and state." Furthermore, Article 69 paragraph 2 also emphasizes that: "Every human right creates a basic obligation and responsibility to respect the rights of fellow humans in return and that the Government must respect, protect, uphold and promote those rights."

This paper aims to adopt restrictions on people's rights while considering their obligations. The autonomous right over one's body cannot take precedence over health care obligations since the body in question can also injure other human bodies through a virus or pathogen transmission. The basis for this reasoning is that the virus hiding in an autonomous body cannot be made autonomous. Therefore, the state will follow the laws as stipulated in Article 28 H paragraph 1 of the 1945 Constitution, which states that: "Everyone has the right to live in physical and spiritual prosperity, in a good and healthy living environment and the right to health services." The "Everyone" as used in this statute does not refer to an Individual but a community. Article 34, paragraph 3 of the 1945 Constitution guarantees everyone's interest in obtaining health services when talking about the general population. Additionally, Article 152 paragraph 1 of Law Number 36 of 2009 concerning Health highlights the state's responsibility in providing health services, stating that: "The government, local government, and the community are responsible for preventing, controlling, and eradicating infectious diseases and their consequences."

The laws we have discussed show that the state's response to COVID-19 through policies in Indonesia is more valuable in providing health care obligations than the autonomous right to the body. The government's effort in making the COVID-19 Vaccine available should also be considered. Since the Vaccine is costly to produce, the Indonesian government has imported different types, including Sinovac, AstraZeneca, Sinopharm, Moderna, Pfizer, and Sputnik.

Nevertheless, the government should accelerate research in producing domestic Vaccines. Some stride is already being made with the emergence and development of the current Merah Putih vaccine through a collaboration between the Ministry of Research and Technology/National Research and Innovation Agency (Kemenristek/BRIN) with the Ministry of Health. This domestic Vaccine will help distant villages after pre-clinal and clinal trial periods, helping prevent the spread of the virus to remote areas.

The vaccination process can be hastened by following the pattern set by-elections, which takes only one day for the entire country. Instead of polling stations (TPS), the vaccine team can use Vaccine implementation place (TPV), vaccinating 100 people per TPV a day. The health workers

who inject the Vaccine into everyone can be recruited from some students in the health and medical faculties by providing them with education and technical guidance before going into the field.

### **3.2. Justification for the Enactment of the Autonomous Right to Refuse the Covid-19 Vaccine**

The state's implementation of a COVID-19 vaccine in accomplishing its obligation for providing health services is for the common good of all people. Legal science provides a balance point in implementing public policies without ignoring the essential rights of everyone.

According to the prevailing medical research, certain vaccines, such as Sinovac, cannot be given to people, including those who have a confirmed history of COVID-19, pregnant and lactating women, individuals under 18 years of age, those experiencing ARI symptoms such as cough/cold/shortness of breath in the last seven days, and those with blood pressure above 140/90. It should also not be given to people that have family members who are in close contact with or undergoing treatment due to COVID-19 disease, those under long-term active therapy for blood disorders, Systemic Autoimmune disease (SLE/Lupus, and have heart disease (heart failure/coronary heart disease). Additionally, individuals with Sjogren's, kidney disease, hypothyroidism due to autoimmune disease, Rheumatoid Arthritis, blood disorders, chronic digestive tract disease, cancer, and immune deficiency should not be vaccinated with Sinovac. Research is also indicated that recipients of blood products/transfusions, those with Diabetes Mellitus, have HIV (in certain conditions, the COVID-19 Vaccine can be given), have lung diseases such as asthma, COPD, and have tuberculosis should not be vaccinated with Sinovac (Fadlyana et al. 2021; World Health Organization (WHO) 2021).

Article 13, paragraph 3 of the Presidential Regulation Number 14 of 2021 on the Amendments to Presidential Regulation Number 99 of 2020, covers the rights of those who experience side effects of the COVID-19 Vaccine. The amendment done on the Vaccination Implementation in the Context of COVID-19 Pandemic Prevention (Last Amendment with Presidential Regulation No. 51/2021) states that "the target recipients of the COVID19 Vaccine who do not meet the criteria are excluded from the obligation as referred to in paragraph 21 following the indications of the available Vaccine."

Therefore, the law provision does not fully protect a person who cannot be vaccinated since each circulating Vaccine requires Standard Operating Procedures (SOP). However, there is no complete data on who cannot be vaccinated. Those with a clear track record of the disease from the upper-middle-class can be exempted from the Vaccine if it is unsafe. However, some lower-middle-class people have complained about inequality in receiving vaccinations due to a lack of accurate health checks. This person cannot be ignored during vaccination since they may become carriers of the virus and transmit it to others in the future.

Due to distrust in the administration of vaccines in the country, the government has issued a decree through Article 15 B of Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation stating the following: "(1) In the case of adverse side effects following COVID-19 vaccination, as referred to in Article 15 A paragraph (3) and in case the Vaccine cause a disability or death, the government will offer compensation. (2) The compensation, as referred to in paragraph (1), is awarded should the Vaccine result in disability or death, (3) Further provisions regarding the criteria, form and amount for compensation as indicated in paragraph (1) shall be stipulated by the Minister of Health after obtaining approval from the Minister of Finance."

Anti-vaccine groups can interpret the article for the provision of compensation by the state as unsafe because the government is anticipating causalities from the vaccinations. The law does not

hold health workers accountable for any vaccine eventualities, though they are the one who administers the drug. This situation presents a dilemma for the targeted vaccine recipients from rural areas and inner community groups, who care less about compensation if their bodies and lives are not valued. Therefore, the autonomous right over the body should not be enforced on this group. Nevertheless, the government proves accountable for the Vaccine's negative impact through compensation, with no legal recourse on health workers who make mistakes in injecting vaccines and providing a diagnosis. This serves as a warning and concern for future vaccine administration activities. Autonomy and personal life do not justify special treatment or protection of those who do not deserve to receive vaccines.

The principle of equality before the law should be balanced between vaccine recipients and givers. Though the government is quick to provide warnings to those refusing vaccines through Presidential Regulation on Vaccine Procurement and Vaccination Implementation in the Context of Handling the COVID-19 Pandemic, there are no criminal sanctions for vaccine givers when they err in diagnosing prospective vaccine recipients. For instance, Article 13 A paragraph 4 and 5 states that "(4) Any person who has been designated as the target recipient of the COVID-19 Vaccine and does not participate in the COVID-19 vaccination as referred to in paragraph (2) may be subject to administrative sanctions, such as (a). postponement or termination of the social security or assistance; (b). postponement or termination of government administration services; and (c). fine. The article also states that; (5) the administrative sanctions as referred to in paragraph (4) shall be imposed by the ministry, institution, regional government, or agency following their respective authorities. This article is closely followed by the criminal sanction in Article 13 B, which states that: "Everyone designated as the target recipient of the COVID-19 Vaccine, but does not follow the COVID-19 Vaccination as referred to in Article 13 A paragraph (2) and causes obstruction of the implementation of the COVID-19 spread prevention, will be given sanctions as referred to in Article 13 A paragraph (a) and may be imposed by the provisions of the law on Infectious Disease Outbreaks."

These problems will continue in the future during the vaccination period, as many people continue queuing to hunt for vaccines until health workers who provide vaccines inject up to hundreds of people. Even though the vaccine supplies are not sufficient for everyone, vaccine administration activities should be arranged in a place and time based on the neighborhood, village, or sub-district area. At the same time, it is necessary to add health workers to provide vaccine injections by recruiting students from health and medical personnel. Furthermore, regulation of vaccination should not be left only to Presidential Regulation. Still, there is a need to form a special law that governs the necessary sanctions for those refusing.

Moreover, there is no agreement in criminalizing those who refuse vaccination. Others argue that the Infectious Disease Outbreak and the Health Quarantine Laws were not meant to trap parties who reject government policies handling the COVID-19 pandemic. Another argument is that the regulations for handling the COVID-19 pandemic should not be formulated as a criminal offense, cause a health emergency, or be deterred from implementing the prevention of the spread of COVID-19 circumstances in question are difficult to prove. The regulation is focused on the material on prevention, showing that the emphasis is on acts rather than waiting for the consequences of resistance to government policies in health services.

#### **4. CONCLUSIONS AND SUGGESTIONS**

The main objective of Indonesian legal interest is implementing COVID-19 vaccination as the state's obligation of health services rather than maintaining autonomous rights over the body. This philosophy of prioritizing health service obligations is supported by philanthropic philosophy, the principle of the public interest, the theory of the welfare state law, and the proportionality of legal restrictions on rights in-laws and regulations. Autonomous rights over the body can be applied to citizens with limited conditions as long as they experience legitimate resistance to receiving COVID-19 vaccinations.

The COVID-19 vaccination requires special legislation in addition to the presidential regulations. The Covid-19 vaccination process restricts some rights for smooth and quick operations intended to save lives. This process cannot be left for the private sector alone to handle but should be governed by the state policy with the vaccination pattern based on the village or neighborhood area. The law should also balance the recruitment of vaccine givers from health and medical universities.

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# Antinomy Settlement Of Legal Interest Between Autonomous Rights And Obligations Of Health Services: The Case Of Refusals Of COVID-19 Vaccine in Indonesia

*Amir Ilyas*<sup>1</sup> & *Slamet Sampurno*<sup>2</sup>  
Hasanuddin University, Indonesia

## Abstract

*This study aimed to determine the legality of implementing COVID-19 vaccination and the individuals' independent right to reject it. A normative juridical approach, which entails primary legal materials (laws) and secondary legal materials (health and medical law literature) was used and the legal materials were analyzed qualitatively. Furthermore, the set standards on the two legal interests in the implementation of the COVID-19 vaccination were analyzed. The results showed that the vaccination process focuses on the health services obligation rather than on maintaining autonomous rights over the body. This is in line with the academic approach that follows altruistic philosophy, the principle of public interest, the theory of the welfare state law, and the proportionality of legal restrictions on rights in-laws and regulations. Furthermore, legislators should enact laws that govern vaccination. The vaccines should be administered per the village and neighborhood using trained and medical specialists.*

Keywords— COVID-19 Vaccination, Health Services, Autonomous Rights.

## Introduction

The Deputy Minister of Law and Human Rights, Eddy O.S. Hiariej, was quoted by several electronic and print media stating that “criminal sanctions and fines can be imposed on those who continue to refuse the COVID-19 vaccination.” The minister’s sentiment was in line with Article 39, paragraph 1 of Law No. 6 of 2018 concerning Health Quarantine. This law states that “everyone who does not comply with or hinders the implementation of health quarantine from causing a public health emergency can be punished with a maximum imprisonment of one year and/or a maximum fine of IDR 100 million.” Moreover, Article 9 Junction Article 15 paragraph 2 letter of the Health Quarantine Act, states that everyone is obliged to comply with the implementation of health quarantine, including vaccination (Government of Indonesia, 2018).

<sup>1</sup> Lecturer, Faculty of law, Hasanuddin University, Makassar, 90245, Indonesia.  
Email : [amir\\_fh\\_unhas@yahoo.com](mailto:amir_fh_unhas@yahoo.com), [wenlan195@gmail.com](mailto:wenlan195@gmail.com)

<sup>2</sup> Lecturer, Faculty of law, Hasanuddin University, Makassar, 90245, Indonesia.  
Email: [slamets68@yahoo.com](mailto:slamets68@yahoo.com)

The government has also raised the punishment for refusing vaccination as a final remedy (*ultimum remedium*) to provide the last alternative in the pattern of implementation. It continues to prioritize administrative sanctions, seen by implementing the Large-Scale Social Restriction program (Adam et al., 2021; Kurniawati, Rochmah, & Laksono, 2020). To help the anti-vaccination groups understand why vaccination is mandatory, the Indonesian government must rationally have an open dialogue regarding this issue.

This study uses a philosophical, theoretical, and juridical-based approach to examine the correct course of action. Furthermore, the government can accelerate smooth COVID-19 vaccination in Indonesia by encouraging the philosophy of socialization among its ordinary citizens (Mottelson et al., 2021). The philosophy will encourage them to save themselves through government-based vaccination to save their loved ones from COVID-19 transmission.

A thorough search of the relevant literature on legal implication of declining to get the COVID-19 vaccination in Indonesia yielded no result; nevertheless, various studies have been conducted on how the COVID-19 pandemic was handled. Kurniawan (2021) examined the human rights approach to dealing with the COVID-19 pandemic, with a particular emphasis on the need of adopting Large-Scale Social Restrictions (PSBB) programs. Additionally, Handini (2021) employed a human rights perspective to examine government policies related to the COVID-19 pandemic, with a particular emphasis on health and safety insurance rights for health professionals. The study established that these rights were not achieved as a result of the complexity of local government bureaucracy and uneven distribution of Personal Protective Equipment (PPE).

Supriyadi (2020) analyzed government policies in dealing with the COVID-19 pandemic from a forecast perspective. This research found that the government had failed to advocate for people's welfare. Basic needs were not fully addressed, and the legal framework for financial management in handling the COVID-19 pandemic was not yet complete. These frameworks could govern the use of budget during the pandemic without civil and criminal liability to avoid unnecessary errors. Furthermore, Maikel (2021) examined the effects of refusal to abide by health protocols during the COVID-19 pandemic and the normative application of criminal sanctions. However, it failed to conduct a diametrical study on two legal interests used in government health services for the COVID-19 prevention.

The above studies, however, did not focus on the antinomy of legal interest in the administration of COVID-19 vaccination. Therefore, this research was necessary to streamline government programs in facilitating COVID-19 vaccination. The study established the reasons for prioritizing health services obligations to carry out vaccination while justifying reasons or exceptions for autonomous rights to resist the vaccine when medical reasons apply.

## **Research Method**

### **Research Type**

This research is normative juridical research that employs a conceptual approach (Marzuki, 2010). It heavily relies on the theoretical study of the existing literature by connecting the problems to the subject of discussion. Additionally, the research

analyzed legal issues, such as the antinomy of legal interests between autonomous rights over the body and health service obligations when refusing to COVID-19 Vaccine.

### **Legal Material**

This research used primary and secondary legal materials, with the former including the 1945 Constitution, Law Number 36 of 2009 concerning Health, Law Number 39 of 199 concerning Human Rights, and Presidential Regulation Number 14 of 2021 on the Amendments to Presidential Regulation Number 99 of 2020. The presidential regulation was formulated to guide the Vaccination Procurement and Implementation to help citizens cope with the COVID-19 pandemic. In contrast, the secondary legal materials were literature related to health and medical law.

### **Analysis**

The research used qualitative analysis when examining the legal materials by describing the legal antinomy between the autonomous right to the body and the obligation of health services in the administration of COVID-19 vaccination. The study also used a legal conceptualization to obtain the main legal interest and justify one's right to refuse the administration of COVID-19 vaccination.

### **Analysis and Discussion**

#### **• Prioritizing Obligations of the Health Service by the State about the Autonomous Right to Refuse COVID-19 Vaccines**

COVID-19 has affected people's lives for the last two years as it transmitted across the globe. By January 28, 2021, there were 87,640,097 positive cases, with 1,890,847 deaths in over 215 countries in the world (Kurniawan, 2021). In addition, the emergence of the new "Delta" variant in India, Indonesia, and the surrounding countries have dealt a huge blow to the people (Alexandar et al., 2021). The statistics from the Task Force on the Acceleration of COVID-19 (Kemenkes, 2021) (show that the cumulative positive cases in July 2021 were 3,409,658. Most of these cases were from the new variant that killed many people in India (Sasikumar et al., 2020). The rise in infection after normalizing the curve saw the government issue restrictive policies, such as the Community Activities Restrictions Enforcement (PPKM) program to reduce virus transmission.

Indonesia may manage the spread of the new variant due to the available vaccines from other countries. The vaccine arrival and quick implementation could help curb the spread and the effects of the new variant. Data from the Ministry of Health indicate that a total of 21,496,995 have been vaccinated to date (August 3, 2021). This accounts for 44.64% of the eligible population (48,148,817 people). The data is encouraging, with many Indonesians eager to participate in vaccination, as witnessed in long queues in private and public institutions. Nevertheless, some still refuse vaccination, even though the state bears the cost.

People are refusing vaccines for many reasons, including juridical reasons, religious reasons, and others who suspect the material to be *haram* (prohibited). Additionally, others refuse vaccination for safety reasons, fearing it will affect their health and result in death. The major legal challenge the state is facing towards vaccination is that

everyone has autonomous rights over their bodies (Samsi & Jacobalis, 2005). The autonomous right to one's body is a fundamental human right that should not be interfered with unless there is a strong argument to do so (Brennan, Carr, & Cousins, 2007; Office of the High Commissioner Human Rights, 2011).

The citizens' autonomous rights are included in Article 28 G paragraph 1 of the 1945 Constitution, which states that "Everyone has the right to protect personal, family, honor, dignity, and property under his control. This basic law also alludes to the right one has for a sense of security and protection from the threat of fear to do or not do something, considered a human right." Moreover, Article 5 paragraph 3 of Law no. 36/2009 on health shows that "everyone has the right to independently and responsibly determine the health services needed for them."

The autonomous rights referred to in the above laws do not stand alone in the legislation. These laws should be read with consideration to legal provisions mandating the state to form health service policies for every citizen. For instance, Article 34, paragraph 3 of the Constitution states that "The state is responsible for the provision of proper health care facilities and public service facilities." Article 14, paragraph 1 of Law no. 36/2009 on health also affirms that "The government is responsible for planning, regulating, organizing, fostering, and supervising the implementation of equitable and affordable health efforts for the community."

Based on the two legal paradigms mentioned above, there are two incompatibilities of legal interest between autonomous rights and health service obligations. The question implementers are which part of the legal interest should take precedence against the refusal of COVID-19 Vaccine? The research ascertains that the obligation of health services takes precedence over the autonomous right to body based on the following arguments:

First, it is based on an altruistic philosophical approach, which promotes togetherness between communities by providing help to others without expecting any favors (Fraser & Sterelny, 2015; Li, 2021). This philosophy is closely related to the flow of utilitarianism (Mitchell, 1987), considered the precedence to the principle of expediency, as popularized by Jeremy Bentham (Quinn, 2017). The purpose of this law aims to provide happiness for as many people as possible. The study observed that this flow is not the result of social interaction but is innate from a person's birth. Everyone is born with the desire to preserve their life and endowed with good qualities to positively contribute to the surrounding environment. Therefore, the anti-COVID-19 stand pegged on the autonomous right on one's body may not be just if it endangers others. A person's right to their body should be inextricably linked with the external obligation to do good for others. It means that one's independence over the body cannot be used as an excuse to refuse the COVID-19 Vaccine without a basic reason since they should radiate kindness in protecting their surroundings. It is understood that the autonomous right to one's body and the state's obligation to provide health services are needed by human beings; therefore, they are integral units that cannot be separated from each other.

Second, it is based on the theory of the welfare state law, which carries the material law and the people's welfare. This law obligates the state to advance people's welfare through services, assistance, protection, and the prevention of social problems (Elviandri, 2019). The government's approach agrees with an old saying, "*Salus*

*Populi suprema lex exsto*," used by monarch state. The saying can also be applied in a democratic government when it applies strict rules during an emergency (Faiz, 2020). For example, the government issues strict regulations during COVID-19, such as the Presidential Decree No. 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID -19) as a National Disaster.

The Indonesian government has issued policies to curb COVID-19 transmission and to provide health services through vaccines. A person infected by the coronavirus loses his autonomous right to the body and becomes of public interest. The government takes over the responsibility of providing essential health services for the public good. In theory, this law is derived from various state policies due to its obligation to prevent and curb the transmission of the COVID-19. These policies include regional quarantine (Aviarsika, 2020), Large-Scale Social Restrictions (PSBB) (Suraya et al., 2020), and the Community Activities Restrictions Enforcement (PPKM) (Ilyas, 2021).

Third, the law is formulated using the legal principle approach. The principle used to bridge the antinomy of legal interest between the autonomous right to the body and the obligation to provide health services concerning the administration of the COVID-19 vaccination prioritizes public interest over personal interest (*Bonum commune Bono private preferred debit*). Public interest is defined in Article 10 paragraph 1 letter G of Law Number 30 of 2014, which states that "the principle of public interest prioritizes the public welfare and benefit through aspirational, accommodating, selective, and not discriminatory laws." This definition indicates that public interest can be determined through people's will and by prioritizing services fairly when implementing public policies. The understanding of public interest obligates a citizen in contact with health services to implement COVID-19 vaccination to create a healthy life and environment. The reasoning behind this policy is that COVID-19 vaccination should be prioritized if it does not threaten the body, thus dismissing vaccine resistance that uses the autonomous right to the body. The study observed that defending autonomous rights often results in loss of lives, but following government direction on vaccination saves others' lives.

Fourth, the policies follow the juridical approach, resulting from the philosophical and theoretical reasoning of developing norm texts or imperative clauses (Hart, 1994). The statutory regulation that covers right formulation talks about citizens' rights and formulating known restrictions and obligations that should be fulfilled. These obligations and restrictions meet with the original rights that have been normalized at this time. Though Article 28 G paragraph 1 of the 1945 Constitution recognizes that everyone has autonomous rights over their bodies, these rights are limited through (Article 28 J paragraph 2 of the 1945 Constitution. The limitation guarantees the "recognition and respect of others' rights and freedoms by justly considering religious values, morals, security, and public order in a democratic society." Additional laws include Law Number 39 of 1999 on Human Rights highlighted in Article 69 paragraph 1, which states that: "Everyone is mandated to respect other people's rights, morals, ethics, and the order of life in society, nation and state." Furthermore, Article 69 paragraph 2 also emphasizes that: "Every human right creates a basic obligation and responsibility to respect the rights of fellow humans in return and that the Government must respect, protect, uphold and promote those rights."

This paper aims to adopt restrictions on people's rights while considering their obligations. The autonomous right over one's body cannot take precedence over health care obligations since the body in question can also injure other human bodies through a virus or pathogen transmission. The basis for this reasoning is that the virus hiding in an autonomous body cannot be made autonomous. Therefore, the state will follow the laws as stipulated in Article 28 H paragraph 1 of the 1945 Constitution, which states that: "Everyone has the right to live in physical and spiritual prosperity, in a good and healthy living environment and the right to health services." The "Everyone" as used in this statute does not refer to an Individual but a community. Article 34, paragraph 3 of the 1945 Constitution guarantees everyone's interest in obtaining health services when talking about the general population. Additionally, Article 152 paragraph 1 of Law Number 36 of 2009 concerning Health highlights the state's responsibility in providing health services, stating that: "The government, local government, and the community are responsible for preventing, controlling, and eradicating infectious diseases and their consequences."

The laws we have discussed show that the state's response to COVID-19 through policies in Indonesia is more valuable in providing health care obligations than the autonomous right to the body. The government's effort in making the COVID-19 Vaccine available should also be considered. Since the Vaccine is costly to produce, the Indonesian government has imported different types, including Sinovac, AstraZeneca, Sinopharm, Moderna, Pfizer, and Sputnik.

Nevertheless, the government should accelerate research in producing domestic Vaccines. Some stride is already being made with the emergence and development of the current Merah Putih vaccine through a collaboration between the Ministry of Research and Technology/National Research and Innovation Agency (Kemenristek/BRIN) with the Ministry of Health. This domestic Vaccine will help distant villages after pre-clinal and clinal trial periods, helping prevent the spread of the virus to remote areas.

The vaccination process can be hastened by following the pattern set by-elections, which takes only one day for the entire country. Instead of polling stations (TPS), the vaccine team can use Vaccine implementation place (TPV), vaccinating 100 people per TPV a day. The health workers who inject the Vaccine into everyone can be recruited from some students in the health and medical faculties by providing them with education and technical guidance before going into the field.

- **Justification for the Enactment of the Autonomous Right to Refuse the Covid-19 Vaccine**

The state's implementation of a COVID-19 vaccine in accomplishing its obligation for providing health services is for the common good of all people. Legal science provides a balance point in implementing public policies without ignoring the essential rights of everyone.

According to the prevailing medical research, certain vaccines, such as Sinovac, cannot be given to people, including those who have a confirmed history of COVID-19, pregnant and lactating women, individuals under 18 years of age, those experiencing ARI symptoms such as cough/cold/shortness of breath in the last seven days, and those with blood pressure above 140/90. It should also not be given to people that have family members who are in close contact with or undergoing treatment due to COVID-19

disease, those under long-term active therapy for blood disorders, Systemic Autoimmune disease (SLE/Lupus, and have heart disease (heart failure/coronary heart disease). Additionally, individuals with Sjogren's, kidney disease, hypothyroidism due to autoimmune disease, Rheumatoid Arthritis, blood disorders, chronic digestive tract disease, cancer, and immune deficiency should not be vaccinated with Sinovac. Research is also indicated that recipients of blood products/transfusions, those with Diabetes Mellitus, have HIV (in certain conditions, the COVID-19 Vaccine can be given), have lung diseases such as asthma, COPD, and have tuberculosis should not be vaccinated with Sinovac (Fadlyana et al., 2021; World Health Organization, 2021).

Article 13, paragraph 3 of the Presidential Regulation Number 14 of 2021 on the Amendments to Presidential Regulation Number 99 of 2020, covers the rights of those who experience side effects of the COVID-19 Vaccine. The amendment done on the Vaccination Implementation in the Context of COVID-19 Pandemic Prevention (Last Amendment with Presidential Regulation No. 51/2021) states that "the target recipients of the COVID19 Vaccine who do not meet the criteria are excluded from the obligation as referred to in paragraph 21 following the indications of the available Vaccine."

Therefore, the law provision does not fully protect a person who cannot be vaccinated since each circulating Vaccine requires Standard Operating Procedures (SOP). However, there is no complete data on who cannot be vaccinated. Those with a clear track record of the disease from the upper-middle-class can be exempted from the Vaccine if it is unsafe. However, some lower-middle-class people have complained about inequality in receiving vaccinations due to a lack of accurate health checks. This person cannot be ignored during vaccination since they may become carriers of the virus and transmit it to others in the future.

Due to distrust in the administration of vaccines in the country, the government has issued a decree through Article 15 B of Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation stating the following: "(1) In the case of adverse side effects following COVID-19 vaccination, as referred to in Article 15 A paragraph (3) and in case the Vaccine cause a disability or death, the government will offer compensation. (2) The compensation, as referred to in paragraph (1), is awarded should the Vaccine result in disability or death, (3) Further provisions regarding the criteria, form and amount for compensation as indicated in paragraph (1) shall be stipulated by the Minister of Health after obtaining approval from the Minister of Finance."

Anti-vaccine groups can interpret the article for the provision of compensation by the state as unsafe because the government is anticipating causalities from the vaccinations. The law does not hold health workers accountable for any vaccine eventualities, though they are the one who administers the drug. This situation presents a dilemma for the targeted vaccine recipients from rural areas and inner community groups, who care less about compensation if their bodies and lives are not valued. Therefore, the autonomous right over the body should not be enforced on this group. Nevertheless, the government proves accountable for the Vaccine's negative impact through compensation, with no legal recourse on health workers who make mistakes in injecting vaccines and providing a diagnosis. This serves as a warning and concern for future vaccine administration activities. Autonomy and personal life do not justify special treatment or protection of those who do not deserve to receive vaccines.

The principle of equality before the law should be balanced between vaccine recipients and givers. Though the government is quick to provide warnings to those refusing vaccines through Presidential Regulation on Vaccine Procurement and Vaccination Implementation in the Context of Handling the COVID-19 Pandemic, there are no criminal sanctions for vaccine givers when they err in diagnosing prospective vaccine recipients. For instance, Article 13 A paragraph 4 and 5 states that "(4) Any person who has been designated as the target recipient of the COVID-19 Vaccine and does not participate in the COVID-19 vaccination as referred to in paragraph (2) may be subject to administrative sanctions, such as (a). postponement or termination of the social security or assistance; (b). postponement or termination of government administration services; and (c). fine. The article also states that; (5) the administrative sanctions as referred to in paragraph (4) shall be imposed by the ministry, institution, regional government, or agency following their respective authorities. This article is closely followed by the criminal sanction in Article 13 B, which states that: "Everyone designated as the target recipient of the COVID-19 Vaccine, but does not follow the COVID-19 Vaccination as referred to in Article 13 A paragraph (2) and causes obstruction of the implementation of the COVID-19 spread prevention, will be given sanctions as referred to in Article 13 A paragraph (a) and may be imposed by the provisions of the law on Infectious Disease Outbreaks."

These problems will continue in the future during the vaccination period, as many people continue queuing to hunt for vaccines until health workers who provide vaccines inject up to hundreds of people. Even though the vaccine supplies are not sufficient for everyone, vaccine administration activities should be arranged in a place and time based on the neighborhood, village, or sub-district area. At the same time, it is necessary to add health workers to provide vaccine injections by recruiting students from health and medical personnel. Furthermore, regulation of vaccination should not be left only to Presidential Regulation. Still, there is a need to form a special law that governs the necessary sanctions for those refusing.

Moreover, there is no agreement in criminalizing those who refuse vaccination. Others argue that the Infectious Disease Outbreak and the Health Quarantine Laws were not meant to trap parties who reject government policies handling the COVID-19 pandemic. Another argument is that the regulations for handling the COVID-19 pandemic should not be formulated as a criminal offense, cause a health emergency, or be deterred from implementing the prevention of the spread of COVID-19 circumstances in question are difficult to prove. The regulation is focused on the material on prevention, showing that the emphasis is on acts rather than waiting for the consequences of resistance to government policies in health services.

### **Conclusion and Suggestions**

The main objective of Indonesian legal interest is implementing COVID-19 vaccination as the state's obligation of health services rather than maintaining autonomous rights over the body. This philosophy of prioritizing health service obligations is supported by philanthropic philosophy, the principle of the public interest, the theory of the welfare state law, and the proportionality of legal restrictions on rights in-laws and regulations. Autonomous rights over the body can be applied to citizens with limited conditions as long as they experience legitimate resistance to receiving COVID-19 vaccinations.

The COVID-19 vaccination requires special legislation in addition to the presidential regulations. The Covid-19 vaccination process restricts some rights for smooth and quick operations intended to save lives. This process cannot be left for the private sector alone to handle but should be governed by the state policy with the vaccination pattern based on the village or neighborhood area. The law should also balance the recruitment of vaccine givers from health and medical universities.

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