

## The Covid-19 Vaccination's Obligation in Pandemic Era Relates to Autonomous Rights and Informed Consent

Nila Nirmalasari<sup>1\*</sup>, Helmi<sup>2</sup>, Mirza Satria Buana<sup>3</sup>, Nasrullah<sup>4</sup>

Article	Abstract
<p><b>Keywords:</b> Vaccination obligations; autonomy rights; informed consent</p> <p><b>Article History</b> Received: Sep 05, 2022; Reviewed: Oct 11, 2022; Accepted: Oct 24, 2022; Published: Oct 25, 2022;</p>	<p>The government requires the Covid-19 vaccination in a pandemic emergency to reduce and stop the spread of this virus. Based on the study of several previous studies, this mandatory vaccination program received a great reaction in the community, not only in Indonesia, there were those who supported it and there were those who opposed it This paper aims to examine the obligation of Covid-19 vaccination with autonomous rights and informed consent. This research was conducted using a normative legal research method, with a statute and a conceptual approach. The research results are vaccination is part of health care efforts. Informed consent is obligation in every health care efforts. The Covid-19 Vaccination is also obligation in pandemic era. The mandatory Covid-19 vaccination program can be justified because the country is in a pandemic emergency. Recommendation in terms of respecting the right to autonomy, every act of Covid-19 vaccination should be accompanied by informed consent, either in an implied or written form, even though this program is a mandatory program.</p>
<p>Copyright ©2022 by Author(s); This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License. All writings published in this journal are personal views of the authors and do not represent the views of this journal and the author's affiliated institutions. (How to Cite: "Nirmalasari, N., Helmi, Buana, M. S., Nasrullah, (2022). The Covid-19 Vaccination's Obligation in Pandemic Era Relates to Autonomous Rights and Informed Consent. <i>Hang Tuah Law Journal</i>, 6(2), 87-99. <a href="https://doi.org/10.30649/htlj.v6i2.81">https://doi.org/10.30649/htlj.v6i2.81</a>")</p>	



### Introduction

World Health Organization (WHO) has declared Corona Virus Disease 2019 (Covid-19) a Global Pandemic, and the Government of the Republic of Indonesia has declared a public health emergency through Presidential Decree No. 11 of 2020, so mitigation efforts must be carried out by the provisions of the legislation. In addition, Presidential Decree No. 12 of 2020 has also been issued regarding the Determination of Non-Natural Disasters for the Spread of Covid-19 as a National Disaster (Lupia et al., 2020). Vaccination has historically proven to be the most effective and efficient public

<sup>1</sup> Medical Faculty, University of Lambung Mangkurat

<sup>2,3</sup> Faculty of Law, University of Lambung Mangkurat

<sup>4</sup> Faculty of Teacher Training and Education, University of Lambung Mangkurat

\* **Correspondence:** Nila Nirmalasari, Medical Faculty, University of Lambung Mangkurat Banjarmasin, Indonesia. E-mail: [nilachenil@gmail.com](mailto:nilachenil@gmail.com)

health effort in preventing several dangerous infectious diseases worldwide. To overcome the Covid-19 pandemic, Covid-19 vaccination aims to reduce the transmission/transmission of Covid-19, reduce morbidity and mortality due to Covid-19, and achieve herd immunity. Efforts to vaccinate against Covid-19 have been carried out by various countries, including Indonesia Qodir, et.al, 2020).

In the implementation of the Covid-19 vaccination, it is important to pay attention to the scope of implementation, because the concept of herd immunity can be formed if immunization coverage is high and evenly distributed throughout the region so that most of the targets will indirectly protect other age groups (Putri Adytia, 2021). Based on the recommendations of WHO and the Indonesian Technical Advisory Group on Immunization (ITAGI) that the formation of herd immunity can be achieved with a minimum vaccination target of 70%.

Those who agree that vaccination is a "right" argue that healthy living is a human right which means that the state, through the government, is obliged to provide citizens with social rights in the form of fulfilling the right to public health (International Convention on Economic, Social and Cultural Rights). The same thing is confirmed in Article 5 of Law no. 36 of 2009 concerning Health which states that everyone has the right to be personally responsible for determining health services for their own needs. Even so, the right to health is a second-generation human right but its existence can be said to be *jus cogen* (a right that cannot be reduced under any circumstances). Even the absence of the right to health is a violation of the right to life, the same as death, as a right that cannot be reduced under any circumstances (Article 28I (1) of the 1945 Constitution). If vaccination is considered one of the most effective solutions to deal with the Covid-19 pandemic, then Article 28A of the 1945 Constitution which reads that everyone has the right to live and the right to defend his life and life, here can mean the right in a double sense, the right for oneself to get Covid-19 vaccination to survive, and the right of the community and government to force all people to be vaccinated so that people can survive because herd immunity has been achieved. This is also supported by the next Article, Article 28H (1) everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment, and the right to obtain health services. Likewise, if the Covid-19 vaccination is considered part of the progress of science and technology to improve the quality of life, then there is the right of the people based on the 1945 Constitution Article 28C paragraph (1) which states that everyone has the right to develop themselves through the fulfillment of their basic needs, education and benefit from science and technology, arts and culture, to improve the quality of life and for the welfare of mankind.

However, slightly in conflict with the previous rights that were pro-vaccination, the rights stated in the 1945 Constitution Article 28 E paragraph (2) can also be the basis for the community to reject this Covid-19 vaccination program because it is stated there Everyone has the right to freedom of belief, express thoughts, and attitudes, according to his conscience. It is also mentioned in the following Article, Article 28 I paragraphs 4 and 5, which reads, (4) The protection, promotion, enforcement, and fulfillment of human rights is the responsibility of the state, especially the government, and (5) To uphold and protect human rights by the principle of a democratic rule of Law, the implementation of human rights is guaranteed, regulated, and stated in laws and regulations. However, these articles are limited by the next Article, article 28 J, paragraphs 1 and 2, which reads that everyone is obliged to respect the human rights

of others in the orderly life of society, nation, and state. In exercising his rights and freedoms, everyone is obliged to comply with the restrictions established by Law for the sole purpose of ensuring the recognition and respect for the rights and freedoms of others and fulfilling fair demands by considerations of morals, values and principles, religious values, security, and public order in a democratic society (Ummul Firdaus, 2022).

As for the right to get information, about Covid-19, current conditions, regarding Covid-19 vaccination, including when the Covid-19 vaccination is offered, in the form of informed consent, it is stated in the 1945 Constitution Article 28F which Every person has the right to communicate and obtain information to develop his personal and social environment, and has the right to seek, obtain, possess, store, process, and convey information using all available channels (J.E.Mueller, 2022).

On the other hand, some argue that vaccination is actually a citizen's obligation, this is because the goal is to build herd immunity. Such immunity will only be achieved if more than 70 percent of the population is vaccinated. This obligation must be carried out by every citizen because the safety of the people is the highest Law (*Salus populi Suprema lex esto*), which was previously mentioned in Article 28 J of the 1945 Constitution, and anyone who refuses to be vaccinated will be deemed to have disobeyed implementation of health quarantine which can be threatened with legal sanctions (Adriansyah, 2020). This is following Article 8 (1) jo. Article 93 of Law no. 6 of 2018 concerning Health Quarantine states that any person who does not comply with the implementation of the health quarantine as referred to in Article 9 (1) and/or obstructs the health quarantine to cause a public health emergency shall be punished with imprisonment for a maximum of 1 year and/or a fine of a maximum of One hundred million maximum, reinforced by the previous Article, namely Article 15, states that vaccination is part of the quarantine action. The words are (2) Health Quarantine Measures as referred to in paragraph (1) in the form of: a. Quarantine, isolation, vaccination or prophylaxis, referral, disinfection, and/or decontamination of people as indicated (Sarwo, 2021).

Based on the explanation above, in principle, vaccination is not only a personal matter related to the right to health but also the obligation of citizens to prevent disease transmission by building group immunity (Coccia, 2022). Indeed, living together in a community is not only to save oneself but also to help others in obtaining protection for their health.

Quoting from the kemenkumham.go.id page in the corner of the legal counseling, it is written that basically, giving vaccination is the government's responsibility to carry out efforts to overcome Covid-19, and if there are people who refuse vaccination, people who refuse vaccination are considered to hinder the implementation of handling the Covid-19 outbreak, then people who refuse vaccination may be subject to sanctions based on Law Number 4 of 1984 concerning infectious disease outbreaks Article 14 paragraph (1), Law Number 6 of 2018 concerning Health Quarantine Article 15 and Article 93. Then in Presidential Regulation Number 14 of 2021 regarding amendments to presidential regulation number 99 of 2020 regarding vaccine procurement and vaccination implementation in the context of dealing with the 2019 corona virus disease pandemic Article 13 A paragraph (2) and paragraph (4).

The editor of the sentence which reads obliging the Covid-19 vaccination and administrative sanctions is contained in Presidential Regulation Number 14 of 2021

Article 13A paragraph (2) Everyone who has been designated as the target recipient of the Covid-19 Vaccine based on the data collection as referred to in paragraph (1) must follow Covid-19 Vaccination. In the Regulation of the Minister of Health No. 10 of 2021 concerning the implementation of Vaccines in the context of the Covid-19 Pandemic, Article 14 also mentions the obligation of the Covid-19 vaccination. "Every person who has been designated as the target recipient of the Covid-19 Vaccine based on the data collection as referred to in Article 13 must take part in the Covid-19 vaccination following the provisions of the legislation".

Vaccination is part of health care efforts, as we can conclude from our Health Law, Law Number 36 of 2009 Articles 1, 152 and 153. Informed consent is obligation in every health care efforts based on article 45 paragraph (1) of Law Number 29 of 2004 concerning Medical Practice). The Covid-19 Vaccination is also obligation in pandemic era based on the Regulation of the Minister of Health No. 10 of 2021 concerning the implementation of Vaccines in the context of the Covid-19 Pandemic Article 14. So, the question is, if vaccination is mandatory, the right to outonomy is ignored and informed consent is no longer required? This paper aims to provide an overview of the boundaries and how autonomous rights and informed consent are in the Covid-19 Vaccination.

## Method

The type of research conducted in this thesis research is normative legal research. The type of research that researchers do is Doctrinal Research. In order to obtain scientific truth on the answers to the legal issues being studied, this research uses the statute approach and the conceptual approach (Marzuki, 2009). The legal approach is used to review several rules, such as law number 36 of 2009 Concerning Health, Law Number 6 of 2018 concerning Health Quarantine, and government regulation number 40 of 1991 concerning Control of Outbreaks of Infectious Diseases.

## Result and Discussion

### 1. Patient Autonomy Rights Theory and Benefit Theory

For people who refuse or still do not accept the obligation to vaccinate against Covid-19, this right to autonomy is often cited as an excuse. Every patient has the right to autonomy for himself in choosing what medical action is best for him (the right to self-determination). This right is stated in Article 56, paragraph (1) of the Health Law. It should be noted that this autonomy right is granted if the information regarding the diagnosis and the choice of medical/medical action will then be notified completely, honestly, and correctly by the doctor to the patient (Manuel P, 2019).

Likewise, in the Indonesia Constitution 1945 article 28 E verse (2) supports the rejection of the covid-19 vaccination, because it states that everyone has the right to freedom to believe in beliefs, to express thoughts and attitudes according to their conscience. It is also mentioned in the following Article, Article 28 I paragraph 5, which reads, "To uphold and protect human rights in accordance with the principles of a democratic rule of Law, the implementation of human rights is guaranteed, regulated, and set forth in laws and regulations. However, these articles are limited by the next Article, article 28 J, paragraphs 1 and 2, which reads that everyone is obliged to respect the human rights of others in the orderly life of society, nation and state. (2) In

exercising his rights and freedoms, everyone is obliged to comply with the restrictions established by Law to guarantee recognition and respect for the rights and freedoms of others and to fulfil fair demands in accordance with considerations of morals, values and principles, religious values, security, and public order in a democratic society.

As an independent country 70 years ago, Indonesia should have been one of the most developed countries. It is likely to happen due to the fact that Indonesia has both a lot of natural and human resources more than other countries. There are actually many efforts that could have been made by Indonesia if it was supported by a good leadership model. In fact, however, it does not. Thus, Indonesia was still identified as a developing country up to recent days. Its political system is still stuck in a pseudo democracy (Nadzir, 2017). That's why sometimes it's also difficult to claim rights in Indonesia.

The principle of expediency of Jeremy Bentham was later famous for his motto, that the purpose of the law is to realize the greatest happiness of the greatest number (the greatest happiness, for the most people), may be more in line with society that supports the obligation to vaccinate Covid-19. According to Bentham, the existence of a state and law is solely for the true benefit, namely the happiness of the majority of the people. Related to this utility principle, Bentham bases his whole philosophy on two principles, namely the association principle and the greatest-happiness principle (Wadi, 2014). It is also supported by the principle of *Salus populi Suprema lex esto* which means that the safety of the people is the highest law (Adriansyah, 2020).

Autonomous rights and the principle of expediency are both parts of ethical principles that are not contradicted by each other. The principle of ethics itself is a basic belief or general rule that is developed from an ethical system. From there, a code of ethics for the medical profession is compiled, which can be translated into six (6) ethical principles (Jeniffer Poelmarie Tinungki, 2019).

- a. Principle of respect to the patient's autonomy
- b. Principle of veracity/honesty
- c. Principle no harmful/ no maleficence
- d. Principle of benefit /beneficence
- e. Principle of confidentiality
- f. Principle of justice

Vaccination is part of health care efforts, as we can conclude from our Health Law, Law Number 36 of 2009 Articles 1, 152 and 153. Vaccination and immunization have different meanings. However, the difference between vaccination and immunization is often overlooked because they both have the same goal, which is to increase the body's resistance to certain diseases. Vaccination is the process of administering vaccines by injection or dripping into the mouth to increase the production of antibodies to ward off certain diseases. Immunization is a process in the body so that a person has immunity to a disease. Immunization is divided into active and passive immunization. Vaccination is included in active immunization as an effort to trigger the body to secrete antibodies against certain diseases. In contrast to active immunization, passive immunization means that the body is given antibodies and not provoked to produce body resistance, for example, by injection of immunoglobulin. Active immunization can last longer for the long term, up to a lifetime, while passive immunization only lasts a matter of weeks to months.

So, the Covid-19 vaccination is one of the health efforts with preventive methods or prevention of the Covid-19 infectious disease, which is part of the

government's responsibility according to Health Law Number 36 of 2009 Article 152.

## 2. Obligation of Vaccination in Indonesia

The obligation of vaccination in Indonesia is clearly stated in Presidential Regulation Number 14 of 2021 concerning amendments to Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the context of combating the 2019 Corona Virus Disease Pandemic Article 13A paragraph (2). In the Regulation of the Minister of Health No. 10 of 2021 regarding the implementation of vaccines in the context of the Covid-19 Pandemic, Article 14 also mentions the obligation of the Covid-19 vaccination.

These regulations are also strengthened by several other regulations, which, although they do not explicitly mention the word mandatory Covid-19 vaccination, are considered by some to be a series of the same theme, namely the obligation of Covid-19 vaccination. These rules include:

- a. Article 28 of the 1945 Constitution concerning Human Rights
- b. Law Number 4 of 1984 concerning Outbreaks of Infectious Diseases Article 14 paragraph (1)
- c. Law Number 36 of 2009 concerning Health Article 5 paragraph (3) and Article 56
- d. Law Number 6 of 2018 concerning Health Quarantine Articles 15 and 93
- e. Government Regulation Number 40 of 1991 concerning Control of Outbreaks of Infectious Diseases

Health is based on admitting the degrees of humanity. Without health, someone is no longer equal under the conditional. Without health, one is not capable get rights from others, so health becomes one measure in addition to the level of education and economy, which determine the quality of human resources (Human Development indexes). Health as human right has recognized and set in various international instruments, like in Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Right (ICESCR); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Convention on the Elimination of All Forms of Discrimination against Women (Women's Convention); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention, or CAT); and Convention on the Rights of the Child (Children's Convention, or CRC) (Afandi, 2008).

Indonesia is a country which gives protection by constitutional to human rights. Protection to Human Rights is socialized by a large body of formal institutions to promote respect and protection of human rights as a characteristic which is important to country law which democratic. Protection and respect for human rights are very important pillars in every country which is called as law country (Afandi, 2008).

Related with constitutional protection to right on mental health reflected in Indonesia Constitution 1945 Chapter 28H paragraph (1) "Everyone has the right to live in peace" born and inner, located stay and get a good living environment and healthy as well as entitled get service health". Even, more carry on also mentioned about obligation country related thing the in Chapter 34 paragraph (3) which state that "Country responsible answer on provision facility service health and public service facilities worthy". Related with handling pandemic Covid-19 in Indonesia,

Government has taken steps in protecting health of citizen. Start from set status emergency health, implement obligation Government in skeleton doing 3T (testing, tracing, treatments), build emergency hospitals, do restrictions on various region, as well as with the implementation of vaccinations that have been started in date 13 January 2021 with receiver vaccine first is President Republic Indonesia, Joko Widodo.

In public level, there are pros and cons related to the implementation of vaccination in Indonesia. One of the law issues related to vaccination is whether vaccination for the Public is a right or obligation. As mentioned at the start, the number of activists is firm in rejecting vaccines are a human rights. They use a law which based on Chapter 5 paragraph (3) in the bill number 36, 2009 about Health, which states that "Every person is entitled by independent and responsible answer to determine whatever health services which required for himself". At a glance, the reason for the law could become legitimacy to deny the vaccine Covid-19 based on Law in Indonesia. However, when studied based on conditions in Indonesia during Covid-19 pandemic, implementation of vaccination can become mandatory. There are a number of reasons related to that matter, they are:

When examined, Article 5 paragraph (3) of the Law Number 36 of 2009 concerning Health of course give right for every person to determine the health service which required for herself. In the same Law, in another verse, this right is also emphasized. Paragraph (2) Health development is carried out on the basis of humanity, balance, benefits, protection, respect for rights and obligations, justice, gender and non-discrimination and religious norms, and paragraph 4 says that everyone has the right to get health care. However, when it is seen in the context handling the epidemic, in particular in time of Covid-19 pandemic, there are 2 (two) laws to determine is vaccination is a right or obligation.

First, in Chapter 14 paragraph (1) UU No. 4 years 1984 about contagious diseases outbreak, is state that "everyone who obstructs the implementation of outbreak as regulated in this Law, are threatened with with criminal prison for around 1 (one) year and/or fine as much as Rp 1.000.000, (one million rupiah)". This statement is also supported by the previous Article, namely Article 6 paragraphs 1 and 2, which asserts: " (1) Efforts to control the epidemic as referred to in Article 5 paragraph (1) are carried out by actively involving the community. (2) The procedures and conditions for community participation as referred to in paragraph (1) shall be regulated by a Government Regulation".

Regarding the responsibility of the government in terms of asking for public participation in epidemic control, it can be seen in Articles 8, 9 and 10. Article 8 paragraph (1) To those who experience property losses caused by efforts to control the epidemic as referred to in Article 5 paragraph (1) can be compensated. Paragraph (2) The implementation of compensation as referred to in paragraph (1) shall be regulated by a Government Regulation. Article 9 (1) Certain officers who carry out efforts to control the epidemic as referred to in Article 5 paragraph (1) may be given awards for the risks borne in carrying out their duties. (2) The implementation of awarding as referred to in paragraph (1) shall be regulated by a Government Regulation. Article 10 The government is responsible for carrying out efforts to control the epidemic as referred to in Article 5 paragraph (1).

Second, Article 9 Law No 6 Year 2018 about health quarantine state that, (1) Every Person required to obey health quarantine. (2) Every Person is obliged follow as well as in health quarantine. Article 93 of the same Law contains criminal sanctions

which read "Everyone" who does not obey health quarantine as referred to in Article 9 paragraph (1) and/or hinder-obstruct health quarantine so that cause emergency health public convicted with criminal prison most long 1 (one) year and/ or criminal fine most many Rp 100,000,000.00 (one hundred million rupiah)" . This criminal sanction is taken by the government not without reason, but is related to the responsibility of the government itself which is contained in this Law as well as Article 4 "Central Government and Regional Governments are responsible for protecting public health from diseases and/or public health risk factors that have the potential to cause an emergency. Public Health through the implementation of Health Quarantine". Meanwhile, the rights and obligations of the community can be read in Articles 7, 8, and 9. Article 7 "Everyone has the right to get the same treatment in the implementation of Health Quarantine". Article 8 "Everyone has the right to obtain basic health services according to medical needs, food needs, and other daily life needs during Quarantine". Article 9 paragraph (1) "Everyone is obliged to comply with the implementation of Health Quarantine". (2) "Everyone is obliged to participate in the implementation of Health Quarantine". Regarding vaccination, it is also clearly stated in this Act Article 15 paragraph (2a) "Health Quarantine Actions as referred to in paragraph (1) are in the form of: a. Quarantine, Isolation, vaccination or prophylaxis, referral, disinfection, and/or decontamination of people as indicated".

From these two laws, it is clearly stated that vaccination is the government's obligation and the community's obligation as well, and in carrying out this vaccination obligation, the community is given their rights.

If it is viewed from Indonesia context nowadays, which has announced the health emergency status through decision of President Number 11 of 2020 concerning Stipulation Health Emergency of Covid-19 and if process of vaccination is available method (at moment this) to reduce Covid-19 transmission level, then the Law " Number 36 Year 2009 about health indeed gives right for every person in determining alone health service which required for himself, can ruled out and regulation which apply is Law Number 6 of 2018 and Law Number 4 Year 1984 . In this matter, there is something which applies the principle in Law namely *Lex Specialis derogat legi generali*. This principle refers to two regulations of legislations which by hierarchical have the same position, but the materials involved between the two laws and regulations are not the same in which one of which is a special regulation to the other. *Lex Generalist* here is Law No. 36 of 2009. Meanwhile, *Lex Specialist* here is bill number 6 2018 and bill number 4 1984. So, in this context, vaccination can be mandatory, and whoever hinder or obstructs efforts to cut off chain transmission Covid-19 (in this case, reject vaccination), so person the could worn penalty.

1. As the state in an emergency level, so this applies to the Law of emergency system. Regarding Emergency Law Countries, Duulemen put forward the theory in his book *Staatsnoodrecht en Democratie* mention that *Staatsnoodrecht* must fulfil three conditions, they are (Duulemen, 2010):
  - a. There is no choice for the action taken but to save country;
  - b. An official state's statement that country is in an emergency be spoken in front of parliament;
  - c. Action that is characterized as temporarily
2. Article 5 paragraph (3) of Law Number 36 2009 about Health gives rights for every person to determine health service health which required for himself. Even this chapter is also related to the constitution in chapter 28H paragraph (1) constitution



of 1945. However, it must be noted that everyone's rights even including one's human rights restricted by the existence of other human rights.

In this regard, Article 28J the Indonesia Constitution 1945 that everyone is required to respect other human rights in order social lives, in the community, nations, and states. In operate rights and freedom, every person is required to abide by restrictions which are set by laws with the sole purpose of ensuring confession as well as respect for other rights and freedom person and to fulfill demands which are fair in accordance with moral consideration, religious values, security, and general order in a democratic society. Related to the process of vaccination, of course every person entitles for the choice of health services that a person wants. However this by no means something related to justification to refuse vaccination. Why this happen? Because during Covid-19 pandemy, it is possible that a person who reject vaccination has already been exposed Covid-19 virus yet the person have immune to withstand with Covid-19 virus so virus has not effect to that person's health. However, when he interacts with other other people by direct or no direct (such as when cough, touch something and the virus stick in goods), and without known that virus can contagious to to other people who do not have immunity as strong as person which reject it, then it can harm other people even threaten that person's life. In short, someone who doesn't get vaccinated precisely could potentially become a murderer or zombies for other person. This vaccination is not only aim to protect yourself, but also other people to create immunity in the community (herd immunity). And other people also have the right to healthy lives. So, in this case, vaccination should not be rejected.

3. At this moment, drugs to cure the disease from the Covid-19 virus have not been found yet. By having that consideration, the process of vaccination is very important to cut off transmission Covid-19. Covid-19 vaccination aims at reducing transmission of Covid-19, lessening the number of pain and dead affected by Covid-19, reaching herd immunity, and protecting the Public from Covid-19 so that people can still be productive socially and economically. Availability Covid-19 vaccine, will help process handling pandemic Covid-19 faster. Hence, vaccination program should not be rejected by Public considering that this is an initial effort in order to break the chain of Covid-19 transmission (Handayani, R., et.al., 2020).

Viewed from the point of view of State Science, one of the natures of the state is to have a coercive nature. The state has the power to coerce and even use violence or coercion. This coercive nature is aimed at achieving state goals or national consensus. In relation to the vaccination process, Indonesia as an example of an existing country, can force its citizens to participate in the vaccination program, just as the state also forces its citizens to comply with health protocols. This is intended so that the state's goal as stated in the Preamble to the 1945 Constitution Indonesia to "protect the entire Indonesian nation and the entire homeland of Indonesia" (the connection here is to protect the Indonesian nation from the Covid-19 virus) can be achieved (Kusnardi & Saragih, 2020).

From the data collected by the World Health Organization, it is stated that there have been 200 Covid-19 vaccine findings that have been attempted by scientists in a number of countries. Of that number, many vaccines have reached the clinical trial stage. This vaccine is the hope for 18.5 million worldwide patients who are infected with Covid-19, including more than 200,000 patients in Indonesia (Tejomurti et al., 2020).

In the US and UK, based on research by S. Martin and S. Vanderslott, they analyzed how quickly changes to mandatory vaccine policies are replacing mandatory masks. They paid particular attention to the connections in conversation between the main topics of concern regarding masks and vaccines across social media networks (Martin & Vanderslott, 2021).

With regard to vaccination, there is indeed an Article on community protection in the ICCPR. Article 7 states that no one shall be subjected without his free consent to medical or scientific experimentation. In fact, this article includes articles that receive special protection from the ICCPR, which cannot be reduced in the slightest even though the country is in a state of emergency. However, in understanding the Article, it must be studied more deeply. There are several key words in the Article, namely "medical or scientific experiment" and "without free consent" (Rahmatini, 2015).

Article 28J states that it is a human obligation. The affirmation of the existence of this human obligation has become very important because since the reform era, on the grounds of human rights, many citizens no longer pay attention to their basic obligations as part of other human beings in the community unit. Indonesia is not a liberal-individualistic country that prioritizes absolute freedom for every individual. However, Indonesia is also not a communist country in which there is always a conflict between personal interests and communal (shared) interests. Mahfud MD said that Indonesia is a country that takes the positive aspects in a balanced way from the two extremes of the social system into a prismatic concept. Therefore, the implementation of vaccination in Indonesia can be an obligation for every citizen. Indeed, there is a person's right to choose health services for him. However, when viewed in the context of the current pandemic situation, these rights can be reduced in order to achieve the state's goal of protecting the entire Indonesian nation and also including protecting one's own human rights in order to obtain the right to live a healthy life (Mahfud MD, 2010).

So from the explanation above, in the case of vaccination in Indonesia, there are a number of interrelated variables. Namely the state is in a state of emergency and the next is related to the human obligation to respect the human rights of others (in this case the right to the health of others).

Informed consent is the main component that supports medical action. Because the voluntary consent given by the patient by signing the informed consent is one of the subjective requirements for the occurrence or validity of an agreement if the patient fulfills at least three elements, namely sufficient disclosure of information provided by the doctor, the patient's competence in giving consent and voluntarily (without coercion/pressure) in giving consent (Dhita Annisa, 2020).

Informed consent had distinctive characteristics compared with any other common agreements, in particular to its subject, object, and cause. Towards the establishment of consensus, it referred to the doctor's offering to do any medical treatment and patient's acceptance to have that treatment (Yudhantaka et al., 2021). Informed consent must be done every time you will take a medical action, no matter how small the action. Informed consent is divided into 2 (two) forms (Kinanti et al., 2013) :

- a. Implied or deemed to have been given (Implied Consent)

- 1) Under normal circumstances: Implied consent is the consent given by the patient implicitly, without an express statement. The sign of this statement is captured by the doctor from the attitude and actions of the patient.
  - 2) In Emergency: Implied consent in other forms is if the patient is in an emergency situation (emergency) while the doctor requires immediate action, while the patient is unable to give consent and his family is not in place, the doctor can take medical action the best according to the doctor. In accordance with Article 4 paragraph (1) of the Regulation of the Minister of Health Number 29 of 2008 concerning Approval of Medical Action, that "In an emergency, to save the patient's life and/or prevent disability, approval of medical action is not required".
- b. Expressed (Expressed Consent). Expressed consent is an agreement that is stated orally or in writing, if what will be done is more than the usual examination procedures and actions. In such circumstances, it is better to inform the patient in advance what actions will be taken so that there is no misunderstanding.

In Indonesia, both of them we can use it, depend on risk of the medical action. If the risk is low, we can use just implied consent. Patients may refuse to give consent after being given information through informed consent, the refusal is known as informed refusal. This can be justified based on a person's human right to determine what to do with him. For informed refusal, the patient must understand all the consequences that will occur to him that may arise as a result of the refusal and of course the doctor cannot be blamed for the refusal. For the refusal, the patient will sign on the Denial of Medical Action sheet (Adriana Pakendek, 2012).

Submission of informed consent aims to obtain evidence of consent that can document legal and ethical responsibility. It is hoped that the patient can understand all medical interventions that will be carried out and can choose to agree or not without external coercion and can understand the risks if he refuses the action. Then also emphasized that the patient's personal rights are legally guaranteed. In addition to providing a sense of security to the patient, doctors can also defend themselves if there are demands from the patient or family if something unwanted arises. In a simple example, informed consent is important to protect doctors from accusations of actions taken, such as touching during an examination. Although the patient is willing to undress during the examination and remain calm when being pricked by a needle, according to common sense, it is a sign of agreement, but this is not legally legal in some countries. The purpose of informed consent differs according to the existing context, there are three contexts, namely legal or legal, ethical, and administrative. Legally, it is protecting patients from assault and violence in the form of medical intervention. High standards protect the patient's right to autonomy, decision-making without being compromised. However, applicable legal standards vary and evolve, so it is important for doctors to interpret and determine the appropriate standards to use in practice. Ethically more abstract, namely changing from decision making by doctors, to decision making by patients themselves. Administratively, namely through documents ensuring that the approval process has taken place (Suryaputra, 2019).

## Conclusion

The program requires that covid-19 vaccination can be justified in a pandemic condition in the perspective of autonomous rights, because the country is in a pandemic emergency and every Covid-19 vaccination measure is accompanied by informed consent as respect for autonomous rights. The program requiring Covid-19 vaccination does not necessarily remove the obligation to seek informed consent, either in implied or stated forms. My advice in terms of respecting the right to autonomy, every act of Covid-19 vaccination should be accompanied by informed consent, either in an implied or written form, even though this program is a mandatory program.

## References

- Adriana Pakendek, A. P. (2012). Informed Consent Dalam Pelayanan Kesehatan. *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 5(2), 309–318. <https://doi.org/10.19105/al-lhkam.v5i2.296>
- Adriansyah, A. (2020). Penerapan Asas Salus Populi Suprema Lex Pada Pelaksanaan Demokrasi Di Tengah Wabah Covid-19. *Jurnal Kajian Lembaga Ketahanan Nasional Republik Indonesia*, 8(3), 300–309. <https://doi.org/https://doi.org/10.55960/jlri.v8i3.332>
- Afandi, D. (2008). Hak Atas Kesehatan Dalam Perspektif HAM. *Jurnal Ilmu Kedokteran*, Jilid 2(1).
- Coccia, M. (2022). Improving preparedness for next pandemics: Max level of COVID-19 vaccinations without social impositions to design effective health policy and avoid flawed democracies. *Environmental Research*, 213, 1–4. <https://doi.org/https://doi.org/10.1016/j.envres.2022.113566>
- Dhita Annisa, W. (2020). Analisis Informed Consent Terhadap Perlindungan Hukum Tenaga Kesehatan Di Rumah Sakit Umum Daerah Kota Bandung. *Res Nullius Law Journal*, 2(1), 62–75. <https://doi.org/10.34010/rnlj.v2i1.2899>
- Duulemen. (2010). *Hukum Konstitusi, Problematika Konstitusi Indonesia Sesudah Perubahan UUD 1945* (p. 121). Malang : Setara Press.
- J.E.Mueller, J. B. (2022). Attitudes of healthcare professionals toward the COVID-19 vaccination campaign in France. *Infectious Diseases Now*, 13 September 2022, 1–2. <https://doi.org/https://doi.org/10.1016/j.idnow.2022.09.006>
- Tinungki, J. P. (2019). Kewajiban Dokter Dalam Membuat Rekam Medis Menurut Undang-Undang No 29 Tahun 2004. *Lex Et Societatis*, VII(5), 5–12. <https://doi.org/https://doi.org/10.35796/les.v7i5.24717>
- Kinanti, A. D., Permatasari, D. A., & Shinta, D. C. (2013). Urgensi Penerapan Mekanisme Informed Consent Untuk Mencegah Tuntutan Malpraktik Dalam Perjanjian Terapeutik. *Privat Law*, 2(1), 164465.
- Kusnardi, M., & Saragih, B. R. (2020). *Ilmu Negara*. Jakarta : Gaya Media Pratama.
- Lupia, T., Scabini, S., Mornese Pinna, S., Di Perri, G., De Rosa, F. G., & Corcione, S. (2020). 2019 novel coronavirus (2019-nCoV) outbreak: A new challenge. *Journal of Global Antimicrobial Resistance*, 21, 22–27. <https://doi.org/10.1016/j.jgar.2020.02.021>

- Mahfud MD, M. (2010). *Konstitusi dan Hukum dalam Kontroversi Isu*. Jakarta : Rajawali Pers.
- Manuel P, F. (2019). Analisis Hukum Terhadap Perluasan Tindakan Kedokteran Yang Dilakukan Dokter Terhadap Pasien. *Pactum Law Journal*, 2(3), 743.
- Martin, S., & Vanderslott, S. (2021). "Any idea how fast 'It's just a mask!' can turn into 'It's just a vaccine!'" : From mask mandates to vaccine mandates during the COVID-19 pandemic. *Vaccine*. <https://doi.org/10.1016/j.vaccine.2021.10.031>
- Marzuki, P. M. (2009). *Penelitian Hukum (ke-5)*. Kencana Prenada Media Group.
- Nadzir, M. (2017). Government Responsibility To Protect People'S Rights Over the Clean Water. *Hang Tuah Law Journal*, 1(1), 38. <https://doi.org/10.30649/htlj.v1i1.8>
- Adytia, N. A. P., Rafiqi, I. D., Yaris, A. F. (2021). Fulfillment of the Right to Food During the Covid-19 Pandemic in Indonesia. *2nd International Conference on Law Reform (INCLAR 2021)*, 63–68. <https://doi.org/https://dx.doi.org/10.2991/assehr.k.211102.168>
- Rahmatini. (2015). Evaluasi Khasiat Dan Keamanan Obat (Uji Klinik). *Majalah Kedokteran Andalas*, 34(1), 31. <https://doi.org/10.22338/mka.v34.i1.p31-38.2010>
- Handayani, R. T. Arradini, D., Darmayanti, A. T., Aris Widiyanto, J. T. A. (2020). Pandemic Covid-19, Body Immunity Response, and Herd Immunity. *Jurnal Ilmiah Permas*, 10(3), 378. <http://www.journal.stikeskendal.ac.id/index.php/PSKM/article/view/830>.
- Sarwo, Y. B. (2021). Legal Perspective of Covid-19 Vaccination : Between Citizens ' Rights and Obligations. *Health Law International Online Seminar*, 34–41.
- Suryaputra, G. P. (2019). Penyampaian Persetujuan Tindakan Medis (Informed Consent) oleh Dokter Spesialis Ortopedi kepada Pasien Pra-Operasi Fraktur Humerus. *INA-Rxiv*. June 25, June 25. <https://doi.org/https://doi.org/10.31227/osf.io/r5ymg>
- Tejomurti, K., Pujiyono, Pranoto, & Pati, U. K. (2020). License in the Covid-19 Vaccines Patent As a Strategy for. *Hang Tuah Law Journal*, 4(2), 1–12. <https://doi.org/https://doi.org/10.30649/htlj.v4i2.13>
- Ummul Firdaus, S. (2022). The urgency of legal regulations existence in case of COVID-19 vaccination refusal in Indonesia. *Journal of Forensic and Legal Medicine*, 9, 1–8. <https://doi.org/https://doi.org/10.1016/j.jflm.2022.102401>
- Wadi, H. (2014). Air Disputes Justice , Utilization , and Legal Certainty in. *Jurnal IUS Kajian Hukum Dan KeadilanKajian Hukum Dan Keadilan*, 2(2), 219–238. <https://doi.org/http://dx.doi.org/10.12345/ius.v2i5.167>
- Yudhantaka, L., Anienda, M., Fitriyah, T., & Agustanti, R. D. (2021). The Principle of Consensualism in Informed Consent Between Doctor and Patient Lintang. *Hang Tuah Law Journal*, 5(1), 24–37. <https://doi.org/https://doi.org/10.30649/htlj.v5i1.31>
- Qodir, Z., Effendi, G. N., Jubba, H. Nurmandi, A., M. H. (2020). Covid-19 And Chaos In Indonesia Social-Political Responsibilities. *Talent Development & Excellence*, 12(1), 4629–4642.