

A Libertarian Legitimacy for Mandatory Covid-19 Vaccination

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ABSTRACT

Since its inception, the 2019 coronavirus disease (Covid-19) outbreak has become a major health problem. At the same time, countries worldwide have been waiting for a Covid-19 vaccine to be sufficiently available. When the Covid-19 vaccine became available, several countries began to adopt mandatory Covid-19 vaccination policies. However, mandatory Covid-19 vaccination has received strong opposition from the start. Rejections have emerged from various parties, including from libertarians. The researcher observes that the current research attempting to analyze the mandatory Covid-19 vaccination still revolves around the perspective of human rights and utilitarianism. Then, this study aims to explore and find out how the libertarian perspective toward mandatory vaccination. Normative research methods with conceptual and comparative approaches were used in this study. After analyzing secondary data sources with prescriptive analysis methods, this study finally succeeded in finding that mandatory Covid-19 vaccination has its place, legitimacy, and justification on the ideological side of libertarianism. It is because libertarians accept that the government may require a mandatory vaccination program against Covid-19. In addition, due to the libertarian framework, the government is still justified in enforcing coercive policies that violate the rights of certain individuals if the policy is necessary to avoid greater harm to others.

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1. Introduction

The Coronavirus disease 2019 pandemic (Covid-19) caused by SARS-CoV-2 is still a considerable health matter to date. Even this pandemic is considered a global challenge for all countries in the world (Saied et al., 2021, p. 4280; Gunawan & Irrynta, 2022, p. 17). To deal with this, any government in the world have been undertaking a great struggle

against its spread up to now (Fauziah, 2022, p. 2). Indonesia is no exception (Adamy & Rani, 2022, p. 1). Policies such as lockdowns and other restrictive measures against Mass Social Interaction such as self-isolation, social distancing, Large-Scale Social Restrictions (PSBB), and self-quarantine are now being used by most countries worldwide (Ahmed et al., 2020). At the same time, Covid-19 vaccine becomes widely accessible to potentially limit the spread of the illness and end the pandemic (Sprengholz et al., 2021, p. 986). Even now, The government frequently request critical and urgent political judgments and actions in order to establish the most extensive immunization campaign against coronavirus disease 2019 (Chirumbolo, 2021, p. 4049).

In fact, governments around the world are promoting vaccination eighteen months after the declaration of the Covid-19 outbreak in order to curb excess mortality and also to repair the social and economic damage caused by the pandemic (Achat et al., 2021, p. 95). However, the current issue is on how to expand and maintain high rate of vaccination coverage to protect individuals and society. Mandatory vaccination is the right choice to achieve it (Rezza, 2019, p. 291). The mandatory vaccination policy is even believed to have become one of the strategies to increase compliance with the vaccination program so that it can achieve optimal vaccine distribution in the community (Tomljenovic et al., 2020, p. 2).

When vaccines were first available, the mandatory Covid-19 vaccination has been advocated in any sundry circumstances (Kates et al., 2021, p. 1). However, vaccination did have strong opposition from the start. Many nations debated whether vaccinations should be required, which garnered a great deal of criticism (Prieto Curiel & González Ramírez, 2021, p. 1) and controversial debates (Flanigan, 2013, p. 6). In addition, there have been several protests from the community (Bauer et al., 2021, p. 21). A few are opposed to compulsory vaccination because there is a shortage of credible statistics to estimate risk derivation (Silverstein, 2021, p. 335). Achat et al., (2021, p. 95) also argue that mandatory vaccination may be unwarranted.

In addition, there are also many anti-vaccine groups that continue to campaign against the rejection of mandatory vaccination. (Refisyanti, 2022, p. 137). Anti-vaccination attitudes are often based on strong personal beliefs, based not only on religious beliefs but also on differing perceptions of drugs and libertarian ideology (Velan et al., 2012, p. 1272). Moreover, the anti-vaccine movement and real skepticism are apparent and growing problems (Millar et al., 2021, p.51).

According to Delanty (2020), there are six political-philosophical positions on the coronavirus pandemic: "utilitarian, Kantian, libertarian, biopolitical securitization, post-capitalism, and behavioralism." It's just that the research that criticizes the mandatory vaccine policy, especially in the matter of the Covid-19 vaccine, only revolves around the point of view, ethics (Schwartz, 2013), human rights (Camilleri, 2019; Zaid et al., 2022), and utilitarianism (Giubilini et al., 2018; Savulescu et al., 2020; Zaid et al., 2022). In fact, there has not been many studies on how libertarianism views mandatory vaccination. Thus, this research is expected to make a major contribution to science, especially legal and government public policy. In addition, the authors also hope that this research can provide an explanation and legitimacy related to mandatory vaccination for the success of the covid-19 vaccination program, eventually, is maximizing the handling of the Covid-19 pandemic.

2. Method

This research is normative in nature because it seeks to criticize the government's public policy in the field of public health associated with the mandatory Covid-19 vaccination policy from the perspective of libertarianism. Thus, the approach used was conceptual and comparative because it compared law and public policy with a theory, which in this case, called libertarianism. The data utilized tended to be secondary data sources taken from primary and secondary legal materials. To obtain these legal materials, library research was used as a data collection technique. The data obtained then collected for further analysis using prescriptive analysis.

3. Discussion and Analysis

3.1. An Overview of the Mandatory Covid-19 Vaccination

Indeed, the most essential development in public health since the last century has been vaccines for infectious diseases (Pierik, 2017, p. 221). Initially, vaccination had been voluntary since the mid-1960s (Paul & Loer, 2019, p. 172). Mandatory vaccinations involve the interference of the State with the private lives of individuals, as they force the public to be vaccinated, regardless of the person's consent or not (Camilleri, 2019, p. 249). Nevertheless, the mandatory vaccination policy raises the legal issue of how to achieve a fair balance between the various competing interests that arise from the three main actors affected by the law, namely parents, children, and the State (Camilleri, 2019, p. 247). Not only for the aforementioned statements, but the vaccine mandate is also legitimized for the following reasons:

- a. It is for reduction of the risk of one person transmitting the infection to another, especially for individuals at a higher risk and its severe consequences of the disease (Leask et al., 2021, p. 499). From this first argument,
- b. It is the fundamental responsibility of the State and the government to guarantee the health of their respective society. Therefore, the government should preserve the public interest in herd immunity in society in order to protect vulnerable persons who are unable to protect themselves due to medical reasons (Pierik, 2018, p. 387). Infectious illnesses are unique in that the patient is not only a sufferer of the disease, but also "consciously or subconsciously" a vector in its propagation. Unvaccinated individuals can infect others and lead to epidemics. As a result, infectious diseases should be handled not just as a parent-child duties, but also in terms of public health. It is also necessary to have herd immunity to Covid-19 (Pierik, 2018, p. 387).

However, Khunti, Kamal, Pareek, & Griffiths (2021, p. 235) further explains that any vaccination (including the Covid-19 vaccine) could be mandatory (or compulsory) if it meets four conditions: first, there is a serious threat to public health. Second, the vaccine has been scientifically proven to be safe and effective. Third, the mandatory vaccination policy implemented has a better cost/benefit profile compared to other alternatives. Lastly, it is a proportional level of coercion that does not violate human rights principles. Therefore, as long as certain conditions are met, Panagopoulou (2021, p. 29) argues that compulsory vaccination does not violate basic rights. In fact, as long as the principle of

proportionality is met, mandatory vaccination as a form of medical intervention is a manifestation of the state's obligation to protect basic rights to life and health.

With these considerations in mind, several countries are also currently revising their vaccination policies, acquainting or expanding mandatory provisions under which individual persons are legally entailed to immunize themselves with the vaccines (Odone et al., 2021, p. 560). Among them are countries such as Greece (Giannouchos et al., 2021a, 2021b), Italy (Paterlini, 2021), Australia (Attwell et al., 2021) and also including Indonesia. However, mandatory vaccination policies differ significantly in each country (Gravagna et al., 2020, p. 7865).

Indonesia, for example, legally stipulates the mandatory vaccine policy in Presidential Regulation of the Republic of Indonesia 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 2019 Disease Pandemic (Covid-19). The regulation written in Article 13A paragraph (2) states that "everyone who has been designated as a target recipient of the Covid-19 Vaccine based on data collection is required to take part in the Covid-19 Vaccination". This is also confirmed by the Regulation of the Minister of Health of the Republic of Indonesia Number 10 of 2021 concerning the Implementation of Vaccination in the Context of Combating the Corona Virus Disease 2019 (Covid-19) Pandemic in Article 14.

At first, the vaccination policy applied the priority principle wherein Part One of the Criteria and Priority for COVID-19 Vaccine Recipients of the Regulation of the Minister of Health Number 10 of 2021 in Article 8 paragraph (2) that the priority group for their COVID-19 Vaccine recipients were "a. health workers, assistants for health workers, and supporting staff working in Health Service Facilities; b. the elderly and public service personnel/officers; c. vulnerable people from geospatial, social, and economic aspects" before finally being made available to the broader community. Recently, because the availability of vaccines in Indonesia is optimal and sufficient, the wider community can already carry out their vaccinations in places closest to them.

There are administrative sanctions for the people who become the target receivers of Covid-19 vaccine, but they do not take part in it. The sanctions are in the form of: a. postponement or cessation of the provision of social security or social assistance; b. postponement or termination of government administration services; and/or c. fines which will later be performed by the ministry, institution, local government, or agency in accordance with their authority as clearly outlined in Article 13A Paragraphs (4) and (5).

However, the mandatory vaccination policy was frequently opposed by libertarians (Haberer et al., 2021, p.4; Schmelz, 2020, p.8). The question is whether or not the resistance towards such mandatory Covid-19 vaccination policies is really the ideology of libertarianism? The answers and explanations related to these problems will be discussed below.

3.2. Mandatory Covid-19 Vaccination in the Libertarianism Point of View

Observing how the libertarianism view of mandatory Covid-19 vaccination is quite a dilemma because the libertarians are a group that upholds self-freedom (Rogers, 2015, p. 9; Zaid, 2021, p. 138), there has been a widespread belief in society that compulsory

vaccination violates civil liberties under excessive institutional control (Tomljenovic et al., 2020, p. 7). Moreover, it was also narrated in a study that mandatory vaccination itself is a form of violation in the domain of purity and freedom, as such, mandatory vaccination is an unjustified violation of freedom (Bernstein, 2017, p. 795). In addition, here is also a notion that mandatory vaccination is never justified by many libertarians because it attacks a person's body. In fact, civil libertarians often ally themselves with social conservatives and supporters of the anti-vaccine movement in opposing and rejecting mandatory vaccination (Jacobson et al., 2015, p. 259).

In fact, libertarianism itself is a theory, political philosophy and jurisprudence which originated from "Two Treatises of Government (1689)" by John Locke. At its core, the fundamental principle of libertarianism is that societies should be free to shape their own lives whatever they want without being constrained or coercion by others (Davidson, 2021, p. 7304). According to Steiner (2019, p. 99), libertarianism is not just a general theory of morality. The first principle consists of the rights of claims, liberties, powers and immunities which are contained in the fundamental rights in the form of self-ownership rights. For certain self-owners, these rights correlatively impose limits on all others in the form of duties, obligations, and disabilities. This set of rights and limitations is sufficient to provide innocent people with normative protection of their rights when they are tampered with, destroyed, or taken without consent. In libertarian primary principles, their consent is paramount to take their rights. Hence, individual persons should have free control to make their own decisions, and righteousness is a part of libertarian philosophical beliefs (Ashwell et al., 2021, p. 251).

When it is related to immunization, the right to bodily integrity is quite usual for mandatory vaccination and significantly more contentious than any other rights that may be considered infringed, such as the right to private property, according to some libertarians. To be sure, the rights breached in the instance of compelled vaccination appear to be more rigorous than any other rights if any (Giubilini, 2020, p. 460). Therefore, in the libertarian's view, vaccination can only be accepted if it is in a voluntary form, not mandatory. Voluntary, which involves individual freedom to choose to take the vaccine or not, is much more rational in the eyes of libertarians than mandatory, which tends to be forced by the government.

"This is a matter of freedom. We should be free to decide whether to wear a seat belt or not - it's our body and our choice. It is not a matter of the state" (Giubilini & Savulescu, 2019, p. 237). Those are the responses of the libertarians towards mandatory vaccination. Principally, any state-sponsored intervention or coercion, especially, veiled by bureaucratic routine, are unacceptable according to libertarians (Moller, 2019, p. 1). Mandatory vaccinations tend to involve the state's interference with the private lives of individuals because they force people to be vaccinated regardless of their consent or not (Camilleri, 2019, p. 249). A Society lacks freedom and choice whereas freedom is also a key to libertarian idea that views that all options remain open to them where people still abide free to do anything they want to (Giubilini, 2019, p. 73). Therefore, for the libertarians, the state does not have the right to make decisions regarding vaccination (Velan, 2011, p. 1261). Libertarians may perceive a vaccine as a sign of government repression and violations of civil liberties. Libertarians may also argue that individuals have the freedom to object to behaviors that contravene with their religious or philosophical convictions. Medical treatment, including vaccination, can be refused by

a competent mature person under their self-freedom right. This is a well-established ethical principle that has been securely safeguarded in the majority of common law jurisdictions (Bradfield & Giubilini, 2021, p. 470).

Therefore, disobedience, which has become a problem in dealing with Covid-19 (García-Toledano et al., 2022, p. 73), can sometimes or even often be rooted in the solid personal beliefs of libertarian ideologues (Piccirilli et al., 2015, p. 356). At the same time, if tradeoffs are accurate, liberals and libertarians will have to accept the high mortality rates that is inevitably resulted from periodic epidemics of disease as the price of freedom (Koyama, 2021, p. 9).

Lately, a study reveals that people with a liberal ideological orientation view vaccination as beneficial and support vaccination (Debus & Tosun, 2021, p. 480). In contrast to the classical liberal perspective, which rejects the paternalist legal need to protect oneself through vaccination or immunization, modern libertarians are likely to embrace the policy of mandatory vaccination in the case of Covid-19 in order to protect others from being harmed. According to contemporary philosophical arguments, even some libertarians today advocate forced vaccination against dangerous diseases for the same reason (Graeber et al., 2021, p. 3).

Today's liberals and libertarians also accept that governments may require their citizens to be vaccinated because it is a fundamental principle of liberal society that restrictions on freedom (coercion) by the government are justified only to avoid harm to others. However, self-harm is never a sufficient justification. In general, vaccination does not only provide advantages and protection to individuals who uptake it but also has an impact on other people. The two main ethical features of a pandemic are that people carrying the infection, even if asymptomatic, can pose a lethal threat to others. Second, if a large number of people fall ill simultaneously, this can burden the health system preventing others from accessing health services (Savulescu et al., 2021, p. 1500).

A firm opinion also comes from Navin (2015, p. 182) who supports that within a libertarian framework, the State is still justified in implementing coercive policies that violate certain individual rights if the policy is necessary to prevent harm to others. In the form of infectious diseases, it does not limit their freedom. In the journal of libertarian studies, Block (2020, pp. 231–232) also stated that there are circumstances where mandatory vaccination will be required by law imposed to anyone, especially the government, including parents who must be required to vaccinate their children. After all, people who are not vaccinated are endangering themselves and those with whom they communicate, thereby violating the nonaggression principle (NAP), and should be punished accordingly.

This is further strengthened by the theory of libertarian paternalism that contends that a subject or institution may and possibly has an obligation to promote the choices and practices that help individuals live healthy lives (De Panfilis et al., 2021, p. 9575). This libertarian paternalism has a decision-making approach based on the assumptions as follows: i) it is wrong that individuals always (or usually) make choices that are in their best interests; ii) in many situations, some authorities (i.e., states) have to make (more or less) mandatory policies that will influence individual choices and lifestyles; iii) paternalism does not always involve coercion. Therefore, according to libertarian paternalism, authorities should introduce favorable rules regarding lifestyle or proper

health choices. Undoubtedly, this positive rule should be limited to difficult, complex, and infrequent decisions and when individuals have poor feedback and little opportunity to know and learn. In such cases, the government or authority has the duty or right to intervene (Boniolo, 2016, p. 58). This includes vaccinations.

Given the debate regarding the views and responses of libertarians to mandatory Covid-19 vaccination, it can then be implied that modern libertarians have diverse attitudes. Still, all kinds of libertarianism discover their origin back to the enlightenment thinkers of the 17th and 18th centuries who argue that the state, law, and government exist for the benefit of the people (Iyer et al., 2012, p. 2). It is above the broader community's interests that mandatory Covid-19 vaccination can be justified from a libertarian point of view. Hence, at least since the landmark of US Supreme Court decision in *Jacobson v. Massachusetts* (1905) nearly 100 years ago, it is obvious that the government has had the right to interfere with individual liberties and immunize citizens when there are legitimate public health reasons to do it. Even libertarian fundamentalists generally recognize that the government has the right to interfere with individual freedoms when the exercise of individual liberties is sufficiently detrimental to the public interest (Lantos & Jackson, 2013, p. 2). Thus, it is clear that mandatory Covid-19 vaccination has its own place, legitimacy, and justification in terms of the ideology of libertarianism.

Ultimately, this research may not be in line with the research results of Butler & Sorell's (2022) which conclude that libertarian principles provide little justification or nebulous reason for opposing vaccination mandates and other public health measures. However, the results of the study are not strong. According to Silverman & Wiley (2018), the constitutional guarantees of privacy, autonomy, and freedom that are the axis of libertarian beliefs are not enough to overturn the mandatory vaccination law. On the basis of these arguments, this study is in line with the results of the research conducted by Brennan (2018) who concluded that even in the context of libertarian politics, mandatory vaccination can be justified. Brennan (2018) also further added that individuals may be obliged to receive certain vaccines in a libertarian paradigm because vaccine objectors illegally impose disproportionate harm on others, not only because they have an enforceable obligation served to the general good or because cost-benefit analysis suggests it.

Even for sanctions in the form of a. postponement or cessation of the provision of social security or social assistance; b. postponement or termination of government administration services; and/or c. fines that will be imposed on violators or those who do not vaccinate themselves (without medical reasons) are still at a rational stage so that they can be justified from the point of view of libertarian ideology. This is in line with Savulescu et al., (2021, p. 1501) who stated that coercive measures can be ethically justified in a pandemic. This can include various mandatory standards such as lockdowns, quarantines, isolation, wearing of masks, testing and vaccinations. For vaccination, a variety of coercive measures can be applied, ranging from the requirement to attend educational sessions to withholding benefits, fines, imprisonment, and, at the most extreme, coercion (forced vaccination).

4. Conclusion

Mandatory Covid-19 vaccination has long been a debate involving pros and cons among many parties. This includes libertarians. Classical libertarians may favor vaccination volunteerism because they view mandatory vaccination as a sign of government oppression, violation of civil liberties, and the right to bodily integrity. However, libertarians are now shifting to being more inclined to accept mandatory Covid-19 vaccinations. Today's libertarians also accept that governments may require their citizens to be vaccinated because in the libertarian framework, the governments still have justification in enforcing coercive policies to those who violate the rights of certain individuals. Therefore, the policies are necessary to avoid greater harm to others. To sum up, it is clear that the mandatory Covid-19 vaccination has its own place, legitimacy, and justification in terms of the ideology of libertarianism.

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