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## The Paradox of the International Law Development: A Lesson from Covid-19 Pandemic Management

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**Abstract** *The COVID-19 pandemic has had a global impact since 2019. As countries gradually recover, there are lessons to be learned for the development of international law. The World Health Organization (WHO) plays a crucial role in maintaining global health order. Governments have implemented measures like quarantine, travel restrictions, and vaccination programs, but challenges remain due to varying capacities and ideological differences. Some states prioritize national interests over global mandates from the WHO. This turns the pandemic issue into an evolution of the global legal order. This article offers a unique examination of the WHO's role in managing the COVID-19 pandemic. It aims to provide lessons and analytical*

*approaches for reforming and strengthening health institutions while fostering global unity in the face of unprecedented challenges. The research also presents how the pandemic has impacted the development of the international law by addressing current perspectives, challenges, and potential strategies*

**Keywords** International Law Development, Pandemic, World Health Organization

## 1. Introduction

The Covid-19 outbreak has spread rapidly and has captured the attention of all people around the globe. The pandemic began in 2019 and peaked in 2020-2021. At the present (2022), Covid-19 is providing unprecedented significant results, with active cases decreasing by the day.<sup>1</sup> To date, countries are considered to be more adaptable to the Covid-19 circumstance as the result of the global community's prolonged efforts to deal with COVID-19. According to the sequence of pandemic scenarios that ever occurred in our world, Covid-19 is considered one of the most catastrophic pandemics in history. Although COVID-19 does not become the most harmful pandemic to mankind, it is the fastest-spreading disease, with the second highest infection rate after the 1918-1920 Spanish flu.<sup>2</sup> Covid-19 is also reported to be one of the world's longest pandemics, considering that this issue is still exist so far.<sup>3</sup>

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<sup>1</sup> Debra A. Goff et al., "Global Resilience and New Strategies Needed for Antimicrobial Stewardship during the COVID-19 Pandemic and Beyond," *Jaccp: Journal of the American College of Clinical Pharmacy*, no. February (2022): 5, <https://doi.org/10.1002/jac5.1622>.

<sup>2</sup> Jack Feehan and Vasso Apostolopoulos, "Is COVID-19 the Worst Pandemic?," *Maturitas* 149, no. January (2021): 56, <https://doi.org/10.1016/j.maturitas.2021.02.001>.

<sup>3</sup> David P. Fidler, "The Covid-19 Pandemic, Geopolitics, and International Law," *Journal of International Humanitarian Legal Studies* 11, no. 2 (December 9, 2020): 239, <https://doi.org/10.1163/18781527-BJA10010>.

Relying on the pandemic's global impact, the pandemic has put the key legal foundations of the global health system. It is reported that within weeks, the Covid-19 had circumnavigated the world, putting it to a halt and revealing the vulnerability of the international legal order. Reflecting on how global health law will emerge in the aftermath of the Covid-19 pandemic, it will be critical to examine the lessons learned in the COVID-19 response as well as the reforms required to rebuild global health resilience while maintaining core values of human rights, the rule of law, and global solidarity in the face of unprecedented threat.<sup>4</sup> Furthermore, the negative impact of Covid-19 is projected to have a detrimental impact on global health under the argument that political and international legal controversies will not immediately end even when now the curve is successfully lowered. Therefore, it is undebatable to consider that the issue of Covid 19 is not merely a health problem but indeed a large-scale policy decision by countries that have an indirect impact on the international legal order.<sup>5</sup>

Up to May 2022, the World Health Organization (WHO) noted that around 526 million cases of the spread of the Covid-19 virus had been reported worldwide, resulting in 6.30 million deaths with around 23 million active cases. The United States leads with confirmed cases around 85 million with more than 1 million deaths, followed by India, Brazil, the Russian Federation, and most of Western Europe suffering from immoderate infection rates. In the same report, Indonesia is ranked 19<sup>th</sup> in with 6 million cases of infection and 156.519 deaths.<sup>6</sup> Despite the fact that the statistic of Covid-19 infection is now decreasing, the existence of this pandemic

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<sup>4</sup> United Nations, "Global Health: Then and Now | United Nations," accessed November 28, 2021, <https://www.un.org/en/chronicle/article/global-health-then-and-now>.

<sup>5</sup> Fidler, "The Covid-19 Pandemic, Geopolitics, and International Law."

<sup>6</sup> "COVID Live - Coronavirus Statistics - Worldometer," accessed May 21, 2022, <https://www.worldometers.info/coronavirus/>.

has wreaked havoc on human health and the global economy. It is recorded that until 2022, global Gross Domestic Product (GDP) has significantly decreased by more than 4%.<sup>7</sup>

The COVID-19 epidemic has strained health systems throughout the world, causing catastrophic disruptions. Borders have been closed, industries have been stalled, and normal life has come to a halt. In the absence of a solution or vaccine, governments throughout the world have endeavored to enforce physical distance among their people.<sup>8</sup> However, vulnerable, marginalized, and impoverished governments have encountered structural inequalities in fulfilling these required imperatives to control the epidemic. The disproportionate risk of infection exacerbates health disparities within and among governments with underdeveloped health systems that lack the capacity to implement mitigation strategies. Observing from the long-standing pandemic virus spread, national legal measures have been unable to prevent, identify, or respond to the epidemic as the coronavirus sweeps through unprepared nations. The intensity of social, political, and economic upheaval has put global health legislation to the strain like never before. Moreover, poor public transparency, inadequate regional cooperation, nationalism beliefs, secrecy, and recriminations have characterized numerous governments' responses to the pandemic, with evidently presenting a devastating result.<sup>9</sup>

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<sup>7</sup> World Health Organization, "WHO Coronavirus Disease (COVID-19) Dashboard," WHO, accessed 19 November 2021.

<sup>8</sup> Lawrence O. Gostin, Roojin Habibi, and Benjamin Mason Meier, "Has Global Health Law Risen to Meet the COVID-19 Challenge? Revisiting the International Health Regulations to Prepare for Future Threats," *Journal of Law, Medicine and Ethics* 48, no. 2 (June 1, 2020): 378, <https://doi.org/10.1177/1073110520935354>.

<sup>9</sup> Steve J. Bickley et al., "How Does Globalization Affect COVID-19 Responses?," *Globalization and Health* 17, no. 1 (December 1, 2021): 10, <https://doi.org/10.1186/S12992-021-00677-5/TABLES/3>.

Initially, the hindrance in dealing Covid-19 pandemic started with the announcement of a health emergency (Public Health Emergency of International Concern, or PHEIC) by the World Health Organization, (WHO), which was considered too late. PHEIC was declared under the International Health Regulation (IHR) after China effectively quarantined nearly 20 million people and proclaimed measures to suppress the spread of the disease nationwide. In fact, when WHO declared a PHEIC on January 30, 2020, the recommended measures were not considered sufficient to contain the spread of the virus worldwide afterwards.<sup>10</sup>

WHO as the main international organization who responsible in managing global health order, considered to be failed in handling the pandemic under several reasonings. For instance, the tardiness of the WHO Emergency Committee in declaring PHEIC status has raised doubts regarding the effectiveness of international organizations in dealing with emergencies. Equally troubling, according to the State Party Annual Reporting IHR 2005 in 2020, it noted that 182 member countries in their capacity to prevent, detect, and respond to pandemics vary widely.<sup>11</sup> Furthermore, the data also shows that only about 60% of the state parties with middle-upper economic status have sufficient resources for emergencies, means that around 40% of the rest of the world suffered tremendously from the impact of this pandemic.<sup>12</sup> Implementation hindrances are also caused by the various independent actions of states governments refusing to be subjected under the WHO mandate due to ideology reasonings. The

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<sup>10</sup> Saira Baloch et al., "The Coronavirus Disease 2019 (COVID-19) Pandemic," *The Tohoku Journal of Experimental Medicine* 250, no. 4 (2020): 273 <https://doi.org/10.1620/TJEM.250.271>.

<sup>11</sup> Michael Mccarty, *A Brief History of the World Health Organization* (London: The Lancet 360, 2002) p 45.

<sup>12</sup> Fitriani Kahar et al., "The Epidemiology of COVID-19, Attitudes and Behaviors of the Community During the Covid Pandemic in Indonesia," *International Journal of Innovative Science and Research Technology*, vol. 5, 2020, 37 <https://covid19.kemkes.go.id/>.

ideological differences of certain countries that place their national interests first are also caused by their beliefs that international organizations' policies are considered ineffective when applied to specific situations in various countries. Given the fact that indeed all countries have dissimilar capacity and resources.<sup>13</sup>

Universal policies tend to be difficult for disadvantaged countries to adopt. For instance, in the quarantine policy, several countries successfully reduce the rate of virus spread since the mechanism is implemented effectively and does not cause harm due to their capacity to provide sufficient resources. Meanwhile, in other parts of the world, such as India, regional quarantine significantly impacts the economy and public safety. The diversity of situations in various countries provides a new paradox in the international legal order based on two contradictory sides.<sup>14</sup> The Covid-19 pandemic explicitly highlights the issue of state party compliance with international organization decisions, which have direct implications for the success in dealing with the pandemic. However, the level of policy effectiveness that has not been optimal and the fact that the pandemic has not yet ended has put international law in a 'questionable' position.

The article is unique since it examines the WHO mechanism in Covid-19 management in order to provide both lessons and analytical approaches for reforming and rebuilding existing health institutions while developing global unity in the face of unprecedented threats. Furthermore, the purpose of this research is to investigate the impact of the Covid-19 pandemic on the development of international law

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<sup>13</sup> Sabrina Nadilla, "Krisis Covid-19 : Perspektif Hukum Internasional Terhadap Pandemi (Covid-19 Crisis : An International Law Perspective to Pandemics)," *Majalah Hukum Nasional* 50, no. 2 (2020): 6.

<sup>14</sup> Armin von Bogdandy and Pedro Villarreal, "International Law on Pandemic Response: A First Stocktaking in Light of the Coronavirus Crisis," *Max Planck Institute for Comparative Public Law* 3 (March 26, 2020), p. 56 <https://doi.org/10.2139/SSRN.3561650>.

order by highlighting present standpoints, challenges, and potential strategies.

## 2. Method

The type of research uses in this study is normative legal research that examines the situation descriptively to strengthen the old theory and support the development of the new theory.<sup>15</sup> The research uses an approach to the formulation of the problem and research objectives. The data sources used are secondary data sources consisting of primary legal materials, secondary legal materials, and tertiary legal materials.<sup>16</sup>

## 3. Result & Discussion

Prior to providing insight into the implementation of Covid-19 management to the development of international law, the author provides several literature reviews that are deemed necessary as the core of this article. The author highlights several points as the literature study, including the importance of the World Health Agency (WHO) as the primary international organization, current Covid-19 infection disease statistics, and Covid-19 impacts to our society.

### A. Legal Ground Review: World Health Organization Role in Managing Covid-19 Pandemic

Glancing at the perspective of international law, WHO holds a significant stake in ensuring global health. The working mechanism of the international health organization in its response to deal with pandemics are carried out based on the Constitution of the World

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<sup>15</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: Penerbit Universitas Indonesia, 2012), p 50.

<sup>16</sup> Soerjono Soekanto, *Penelitian Hukum Normatif*, (Jakarta: PT Raja Grafindo Persada, 2012), p 37.

Health Organization, which has been in effect since April 7, 1948, outlined in Articles 21 and 22.<sup>17</sup> Article 21 of the WHO Constitution regulates that:

*The Health Assembly has the authority to establish regulations regarding:*

- 1) *sanitary and quarantine requirements and other procedures designed to prevent the international spread of disease;*
- 2) *nomenclature of disease, cause of death, and public health practice;*
- 3) *standards with respect to diagnostic procedures for international use;*
- 4) *standards related to the safety, purity and potency of biological, pharmaceutical and similar products engaged in international trade;*
- 5) *advertising and labeling of biological, pharmaceutical and similar products; products engaged in international trade*

Art. 21 provisions were then strengthened by Article 22 of WHO Constitution, which regulates:

*The regulations adopted in accordance with Article 21 shall enter into force for all Members following appropriate notification by the Health Assembly (PHEIC status), except for those Members who may notify the Director General of the refusal or reservation within the period specified in the notification.*

The WHO working mechanism in Article 21 then constructs three main instruments, which are then used as the legal basis for handling international pandemics, namely International Sanitary Regulations (ISR), International Health Regulations (IHR), and Nomenclature Regulations. In its development, WHO adopted the revised IHR in 2005 and officially binds 196 member countries.<sup>18</sup> IHR 2005 has the function to prevent, protect, monitor, and provide a

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<sup>17</sup> Max Roser, Hannah Ritchie, and Esteban Ortiz-Ospina, "Coronavirus Disease (COVID-19)-Statistics and Research," n.d.

<sup>18</sup> Nadilla, "Krisis Covid-19 : Perspektif Hukum Internasional Terhadap Pandemi (Covid-19 Crisis : An International Law Perspective to Pandemics )", p 7.



response to global health threats while prioritizing the sustainability of international traffic and trade. IHR 2005 regulates several policies in dealing with the pandemic, namely:

a) Public communication system through PHEIC

The IHR grants exclusive authority to WHO to declare PHEIC status and revoke it.

b) Notification policy

The IHR, through their National Focal Point, is deemed to file reports to the WHO website within 24- and 72-hours requesting follow-up on health emergencies.

c) Expansion of WHO's authority to collect information related to health emergencies

In this mechanism, the 2005 IHR ensures the expansion of WHO to be able to request information to any references, including unofficial sources; it is even possible to request additional information as necessary.

d) National capacity enhancement

The 2005 IHR guarantees the accessibility of inspection and surveillance of diseases at the countries' entrance and ensures the fulfillment of minimum capacity in terms of detection, assessment, and reporting the number of infections.

e) Strengthening the role of WHO

IHR encourages WHO to coordinate and communicate between countries in providing technical assistance in handling the pandemic virus and collaborating with experts to formulate recommendations for pandemic mitigation.

Based on the information above, as we observe WHO's framework and authorities, these policies are considered sufficient and technical. However, it is more than possible to encounter many gaps in its implementation. The efficacy of a regulation must be complemented by member states' commitment to implement these

policies. In practice, WHO member states have a moral commitment to the main world health organization's policies. However, the moral commitment is only based on a soft law which then lays back to the willingness of each state parties, whether or not, they would be subjected to the existing policies. Since WHO's mandate does not regulate consequences or is coercive, state parties have the authority to implement (or not) all or part of the policy, depending on their needs and capacity.

## B. The Current Statistic of Covid-19 Infection Worldwide

After more than two years of Covid-19, many countries are starting to lower their guards. Based on the current data, the Covid-19 transmission per May 2022 has shown a significant result. Compiled from *Worldometer* data, around 526 million cases have been reported, resulting in 6,2 million deaths, with approximately 23,7 million active cases worldwide. The following data shows the tenth countries with the most cases in the world:<sup>19</sup>

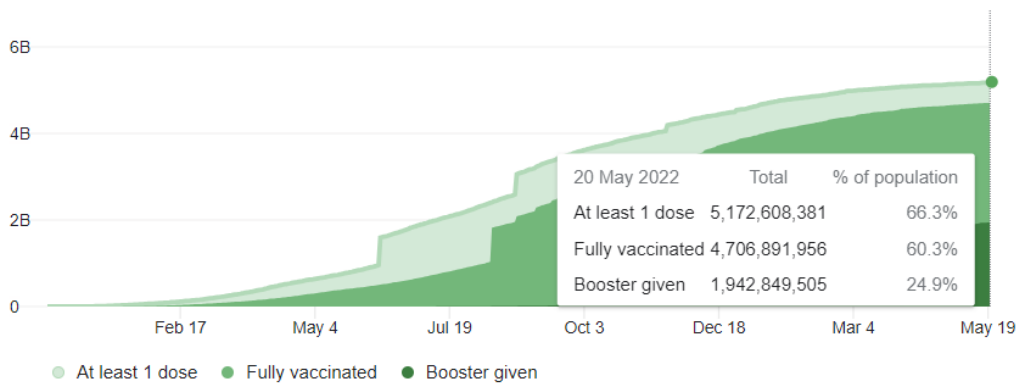
**TABLE 1 Covid-19 Infection Status Worldwide in May 2022**

No	List of Countries	Case in Total	Deaths
1	United States of America	82,984,459	1,028,902
2	India	43,136,340	524,348
3	Brazil	30,780,028	665,657
4	France	29,337,985	147,780
5	Germany	26,082,317	138,709
6	United Kingdom	22,238,715	177,977
7	Russia	18,288,740	378,270
8	South Korea	17,229,263	23,965
9	Italy	17,229,263	165,918
10	Turkey	15,061,376	98,921

<sup>19</sup> "COVID Live Update: Worldometer," accessed 4<sup>th</sup> February 2022 <https://www.worldometers.info/coronavirus/>.

According to the same source, Indonesia ranked 19<sup>th</sup> with approximately 6 million case and more than 150 thousand deaths. However, per May 2022, the Covid-19 transmission rate dropping rapidly after a massive surge in January 2022 during the Omicron wave. Although the steadily decreasing number, followed by numerous of lifted restriction policy, the Covid-19 pandemic still considered exists.<sup>20</sup> The pandemic is not over yet, and that the vaccination must be optimized. Vaccination coverage is still below 70% of the population (Figure 1). Omicron, the latest Covid-19 variant, is still generating severe illness, particularly among the higher risk categories. The COVID-19 is a volatile virus that evolves rapidly, making it more difficult to forecast what will happen next.<sup>21</sup> As a result, at this critical point of the pandemic, all governments and individuals must take measures simultaneously. Previous efforts must be maintained while seeking better solutions.

**FIGURE 1. Vaccination Status Worldwide**



Source: Our World in Data, retrieved from <https://ourworldindata.org/covid-vaccinations>

<sup>20</sup> Roser, Ritchie, and Ortiz-Ospina, “Coronavirus Disease (COVID-19)-Statistics and Research.”

<sup>21</sup> “The Science of Why Coronavirus Is so Hard to Stop - The Washington Post,” accessed November 24, 2021, <https://www.washingtonpost.com/health/2020/03/23/coronavirus-isnt-alive-thats-why-its-so-hard-kill/>.

## C. The Impact of Covid-19 Pandemic in Various Sectors

In addition to being a global health threat, the Covid-19 pandemic causes various problems as a domino effect. Some of the sectors affected are:

### a) Economy

After the global severe health crisis in 1918 caused by the Spanish flu pandemic, Covid-19 is the second-most tormenting pandemic with economic implications worldwide. Following the statement of PHEIC status by WHO, the Covid-19 pandemic has caused nearly \$90 trillion in losses to the global economy.<sup>22</sup> Several economic sectors were recorded to suffer from a significant decline: export-import, capital market, tax revenue, and trade. The decline in the economic sector was due to disruptions to the world supply chain.<sup>23</sup> The largest commodity-exporting country, such as China, was forced to barricade its economic activities to suppress the acceleration of the pandemic virus transmission. Therefore, it caused an extended consequence on the sustainability of the economic wheels worldwide.<sup>24</sup>

In addition, the pandemic has also affected market projections, causing investors to be reluctant to invest due to the extreme instability of market assumptions. The other most affected sectors are travel, hospitality, sports, and entertainment. Most of the country's leading aviation industries have closed, and many employees have lost their jobs. So far, it is estimated that there has been more than \$820

<sup>22</sup> Bapi Gorain et al., "Fighting Strategies Against the Novel Coronavirus Pandemic: Impact on Global Economy," *Frontiers in Public Health* 8 (December 9, 2020): 60, <https://doi.org/10.3389/FPUBH.2020.606129>.

<sup>23</sup> Dito Aditia Darma Nasution, Erlina Erlina, and Iskandar Muda, "Dampak Pandemi COVID-19 Terhadap Perekonomian Indonesia," *Jurnal Benefita* 5, no. 2 (2020): 212, <https://doi.org/10.22216/jbe.v5i2.5313>.

<sup>24</sup> Matdio Siahaan, "Dampak Pandemi Covid-19 Terhadap Dunia Pendidikan," *Jurnal Kajian Ilmiah* 1, no. 1 (2020): 75, <https://doi.org/10.31599/jki.v1i1.265>.

billion in lost revenue in the business travel sector alone due to the COVID-19 pandemic.<sup>25</sup> The massive shutdowns of these industries led to a decline in state revenues. It was estimated that there could be 75 million job losses with a loss of \$2.1 trillion in revenue from the tourism sector.<sup>26</sup>

Moreover, Asian Development Bank analysis shows that Nepal is experiencing a severe economic downturn caused by a virus outbreak. The Asian Development Bank predicts that the disease will have a significant impact on various sectors, reducing the country's GDP by up to 0.13% and causing unemployment for about 15,880 people. The tourism, trade, and production sectors are already feeling the effects, with the cancellation of the Visit Nepal 2020 campaign and a sharp decline in tourist arrivals. Additionally, the manufacturing industry is affected due to a decrease in the supply of raw materials from China.<sup>27</sup> Whereas in Indonesia the country experienced its first annual contraction since 1998, with a GDP decline of 2.07%. Key sectors such as tourism, manufacturing, and small businesses were heavily affected. Travel restrictions, supply chain disruptions, and reduced consumer spending led to revenue losses and job cuts.<sup>28</sup>

## b) Education and Technology Developments

Since the emerges of Covid-19 pandemics, one of the most significant mandates by WHO is the enactment of a quarantine policy

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<sup>25</sup> Vladimír Müller and Peter Terem, "Globalization of EU Trade Policy in the COVID-19 Era," *SHS Web of Conferences* 92 (2021): 134, <https://doi.org/10.1051/shsconf/20219201034>.

<sup>26</sup> Gorain et al., "Fighting Strategies Against the Novel Coronavirus Pandemic: Impact on Global Economy."

<sup>27</sup> Kusum Sharma, Amrit Banstola, and Rishi Ram Parajuli, "Assessment of COVID-19 Pandemic in Nepal: A Lockdown Scenario Analysis," *Frontiers in Public Health* 9, no. April (2021): 5, <https://doi.org/10.3389/fpubh.2021.599280>.

<sup>28</sup> Manggi Taruna Habir and Wisnu Wardana, "COVID-19's Impact on Indonesia's Economy and Financial Markets," *ISEAS-Yusof Ishak Institute*, no. 142 (2020): 7, <https://www.csis.org/programs/southeast-asia-program/southeast-asia-covid-19-tracker-0>.

to encourage countries in carrying out a total lockdown by limiting activities at schools, colleges, and offices temporarily. This event affects educators, teachers, students, parents, and all other relevant stakeholders morally, financially, and psychologically.<sup>29</sup> In addressing this problem, the Work from Home (WFH) and Teaching and Learning Activities policies using an online system were implemented to meet the country's educational needs. However, there is another challenge faced by educators, students, and administrators in adapting to technical changes to new learning strategies. The radical shift from traditional classroom education to online platforms is a significant challenge for both teachers and students. The insufficient facilities and the lack of technology create the teaching and learning process hampered and ineffective. In this matter, low-income countries suffer from affordability, technology, shift management, and adaptability to online teaching.<sup>30</sup>

However, the Covid-19 pandemic has also positively transformed the development of technology and information. Data by the PEW Research Center in 2021 shows a significant accumulation in internet usage during the pandemic. Around 90% of respondents stated that the internet had become an essential part of their lives.<sup>31</sup> The presence of a pandemic has pushed people to advance their ability to adapt to the given circumstances. Therefore, it can be concluded that the pandemic not only cause universal misery but also positively impacted society's development through technological advancement.

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<sup>29</sup> Nasution, Erlina, and Muda, "Dampak Pandemi COVID-19 Terhadap Perekonomian Indonesia."

<sup>30</sup> Siahaan, "Dampak Pandemi Covid-19 Terhadap Dunia Pendidikan."

<sup>31</sup> Collen McClain et al., "The Internet and the Pandemic," Pew Research Center, September 1, 2021, <https://www.pewresearch.org/internet/2021/09/01/the-internet-and-the-pandemic/>.

### c) The Development of International Law

As a global phenomenon, pandemics are directly contacting the international legal order. Coordination between countries is needed to limit the spread of the virus, improve its effects, and develop necessary measures in its handling efforts. However, the pandemic has caused several countries to become more isolationist as they seek to protect their citizens and economies. Under pandemic circumstances, the law is wielded as a framework that is expected to improve the world order. To date, numerous legal instruments have been established to minimize and expectantly overcome the issue of the world's pandemic. Commencing from instruments containing recommendations and mandates to coercive-based instruments. As the foremost international body in the universal health order, World Health Organization has shown its commitment by enacting several policies in its effort to handle the Covid-19 pandemic.<sup>32</sup>

However, as one of the global issues, overcoming the issue of a pandemic requires comprehensive and synergistic measures from governments of all countries. Thus, the main focus is on the simultaneous actions by countries as one universal subject. Countries through their commitments have adopted various policies to deal with Covid-19, ranging from travel restrictions, import and export activities, regional quarantine, and vaccination efforts to narrow the space for virus transmission. Yet, the facts show that such policies have inevitable long-term consequences. Moreover, the global economic downturn, and a series of protests against vaccinations in all parts of the world is one of the dozens of conflicts that have occurred due to the Covid-19 pandemic. In this case, international law plays its role by asserting obligations to States in taking the necessary

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<sup>32</sup> Martins Paparinskis, "The Once and Future Law of State Responsibility," *American Journal of International Law*, 114 (4) Pp. 618-626. (2020) 114, no. 4 (October 2020): 620, <https://doi.org/10.1017/AJIL.2020.60>.

efforts. Not only in times of crisis, but international law is also designed to provide a platform and opportunity for countries to resolve common issues, including health order.<sup>33</sup>

In the pandemic, it can be said that the law is developing in a positive direction in providing the basis for fundamental changes in legal order. When classical international mechanisms are insufficient to accommodate current needs, it is practicable for State parties to reform advanced mechanisms as necessary. Therefore, it can be concluded that the present issue is not only causing obstacles but also plays an important role in modernize international legal mechanisms.<sup>34</sup>

Even though the current Covid-19 crisis is showing signs of improvement, it is evident that countries have failed to manage this pandemic. When governments fail to enforce global health legislation, the global community loses the power to manage common threats through collective action. As a common threat, international law exists to provide a mechanism for countries to collaborate in their attempts to combat the Covid-19 pandemic. This paper aims to further examines to what extent has the international law mechanism succeeded in managing global health threats through elaboration regarding the international law standpoint on the national law in the era of pandemic (global health jurisprudence). The debate will center on determining the effectiveness of WHO mandates on member states in managing with pandemic crises and future threats. Furthermore, the essay will then be prompting a discourse about whether the pandemic issue requires a revision to the existing international law framework or form a development of a new adequate instrument to regulate global health governance.

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<sup>33</sup> Curtis A. Bradley and Laurence R. Helfer, "Introduction to 'The International Legal Order and the Global Pandemic,'" *American Journal of International Law* 114, no. 4 (October 2020): 573, <https://doi.org/10.1017/AJIL.2020.72>.

<sup>34</sup> Russell Buchan, Emily Crawford, and Rain Liivoja, "International Law in a Time of Pandemic," *Journal of International Humanitarian Legal Studies* 11, no. 2 (2020): 189, <https://doi.org/10.1163/18781527-01102017>.



## **D. The International Law's Standpoint in Tackling the Covid-19 Pandemic**

### **1. The International Law's Standpoint on the National Law in the time of Pandemic (Global Health Jurisprudence)**

The Covid-19 pandemic has proclaimed the need for an effective international legal order due to the numerous contradictions in international organizations' policies conflicting with the country's national sovereignty. The pandemic problem has caused multilateral cooperation and global governance to be more complex and diverse. Thus, it is necessary to understand the nature and paradox to develop coherent international law. There are contradictions in the normative structure of international law itself, including dramatic shifts in understanding the sovereignty of international law and national law under pandemic conditions. According to classical international law, international law is understood as a mechanism to connect the will and interests of individuals with public demands. During the pandemic, the hierarchy of international law is considered higher since global health problems are included in a special regime related to human rights and world security (a common interest). This regime can transcend a sovereign interest of a country as a single subject, placing the interest of one country means less than the common interest. However, this opinion has been debated by populists at the national level with the argument that a pluralistic and cooperative world political system under an impartial global rule of law is merely a project of the ruling-state domination.

The contradictions of interest between international law and national law in response to the Covid-19 pandemic are explained through the mapping of three main paradoxes, namely:

#### 1) The patriotism paradox

This paradox is based on the willingness of a country's government to diverge from global governance regimes to protect

their most essential national values and interests. During the pandemic, these countries consider that international sovereignty and global cooperation regimes are only a form of expression of fear and to achieve the goal of protection from other countries, while the absolute protection from the pandemic is to put their national interests as the sole subject by acknowledging their capability without having to subject to any higher sovereignty or power.

## **2. The border paradox**

During the pandemic, countries promote policies restricting international travel and trade under the pretext of people protection as their commitment effort implementing WHO's mandate. All countries simultaneously close their territorial borders from any outward activities. From one perspective, this policy is needed during a pandemic to reduce the amount of virus spread. However, border policy will be more effective if it is applied as a prevention effort, not as an active response. Therefore, the establishment of a border policy that was originally intended to protect a population creates vulnerability due to the impact of local production declines and consequently causes crises in the global supply system.

## **3. Equality paradox**

The pandemic virus poses an equal threat to all people in the world. However, this equality of threats is not accompanied by adequate capacity and resources to respond and protect all people from the virus. Discrimination and injustice and the tendency of developed countries to protect their national interests in any manner, including disregarding the interests of other countries, have been widely practiced during this pandemic. Therefore, a practical international approach is required to scrutinize and ensure that universal human rights are being prioritized. Currently, the role of

WHO and other international bodies is only considered as an additional mechanism for controlling the virus, with the fulcrum of sovereignty still being held by each country. Thus, the idea of universal human rights protection will never accomplish the expected outcomes, that all people regardless of their diversities, bears the same and equal rights.

The pandemic virus is considered a destructive force that will infect anyone regardless of nationality, politics, or economy. The diverse responses of countries raise many paradoxes that raise fundamental questions about the future of global governance. The response of populist countries that diverge from universal norms is a fundamental barrier to collective cooperation in dealing with global threats, including pandemics. In fact, the rapid spread of the Covid-19 pandemic has demanded countries worldwide to collaborate simultaneously. The inclusion of the pandemic issue as a threat to universal human rights proves that this issue requires comprehensive handling from all sides. In this regard, strengthening the national system and the synergy of countries to initiate a modern international legal approach to renew our existing vulnerable global system is urgently needed. The author argues that during a pandemic, countries must prioritize the standpoint of international law (universal law) on top of their national law, under the rationality that the global threats must be addressed with global efforts.

## **E. The International Law Development: A Lesson from Covid-19 Pandemic**

### **1. The Role of World Health Organization in Dealing with Pandemic: Policy Effectiveness Overview**

As the spearhead of the global health order, the World Health Organization (WHO) bears the responsibility to effectively formulate recommendations for its member countries in health emergencies.

However, as an international organization that does not exclusively have absolute jurisdiction over the member state policies, WHO has obtained a series of criticisms regarding its response to the pandemic situation, namely:

a) Nationalism Issues During a Pandemic

As an international organization, World Health Organization (WHO) plays a role in monitoring and supplying information about diseases and their spread and helping countries prepare their health systems to identify, track, prevent and treat disease and vaccine distribution. WHO works closely with its member states and has the slightly liberated authority of its own, relying on national governments for funding, access, and implementation. In other words, WHO acts as a trigger and countries as a tool and target for implementation. Therefore, it becomes difficult if there are countries that refuse to cooperate (act of defection) and have the potential to destroy society with their independent policies as a frustrating effort to contain the spread of the virus without considering the impact on other countries.

b) Improving Countries' Compliance Through Implementation of the Principles of State Responsibility

Although countries declare the International Health Regulations (IHR) legally binding through the formal mechanism of ratification of the WHO Constitution and IHR, as soft law, these two instruments are not morally binding. In practice, states tend to ignore this commitment on the grounds that there is no absolute obligation to comply. Therefore, many reform proposals focus on amendments involving the imposition of sanctions on Members who refuse to comply. However, to date WHO still prefers to conduct a voluntary and technical approach rather than coercion. This makes it challenging to handle the pandemic due

to the absence of a powerful authority to contain countries collectively through a coercive approach.

In general, the barrier to the effectiveness of WHO policies in dealing with pandemic situations is the member countries themselves. A debate regarding the hierarchy between international law and national law is inevitable. Nevertheless, we must underline that countries' interests as universal subjects cannot be told to be more important than the interests of the people of a country in a single subject, and vice versa. Furthermore, in the event of a violation of international legal obligations by a country, it will be forgiven or justified if the action is carried out to protect its national interests. WHO, in this case, can be held international responsibility for its failure to suppress the spread of the virus. As Eyal Benvenisti has noted, the WHO governance model is arguably designed to fail in the face of country severities. Therefore, WHO is required to immediately carry out reforms in enforcing compliance by countries (enforcing compliance).

## **2. Implementation of WHO Policies in Pandemic-Affected Countries and Its Correlation in the Developments of International Law**

Curtis Bradley, in his research entitled *Introduction to the International Legal Order and The Global Pandemic*, highlights at least four main reasons why WHO as a world health organization is considered to have failed in responding to pandemic issues, namely the inability to address state-centered root causes; over-reliance on soft law mechanisms; inflexible and frequently late PHEIC statements; and the absence of institutional mechanisms for cross-regime collaboration. The study also argues that the WHO can overcome the pandemic problem by adopting its authority to pressure member countries to comply with International Health Regulations,

actively expand its authority beyond soft public health policies, and switch to a coercive legal approach mechanism.

From one perspective, it seems that WHO is considered a failure in dealing with a pandemic problem. This failure has caused many countries to convert to populist states with the argument that international law is unable to accommodate current needs. However, this is not entirely correct, under the pretext that the handling of the pandemic will be even worse without a global governance regime. The table below shows that the policies taken by countries in dealing with the pandemic are a form of compliance with WHO recommendations:

**TABLE 2 WHO Policy Compliance by Several Countries**

WHO Policies	Countries	Compliance Effort	Status
WHO recommends the use of Antigen-detecting rapid diagnostic tests (Ag-RDTs) as a minimum requirement that can be used to detect cases, trace contacts, to investigate extraordinary events and monitor trends in community spread. <sup>35</sup>	Korea	Performed Standard Q COVID-19 clinical performance examination The rapid antigen test (SQ-RAT) for the diagnosis of COVID-19 using Ct values from initial upper respiratory tract specimens collected from newly diagnosed patients in Korea. <sup>36</sup>	Fulfilled
	Denmark	Instruct everyone in the community whose PCR test result is positive, to record everyone who has had close contact (<2 m for >15 minutes) from >48 hours	Fulfilled

<sup>35</sup> Key Points, "Antigen-Detection in the Diagnosis of SARS-CoV-2 Infection," 2021.

<sup>36</sup> Jaehyeon Lee et al., "Clinical Performance of the Standard q Covid-19 Rapid Antigen Test and Simulation of Its Real-World Application in Korea," *Annals of Laboratory Medicine* 41, no. 6 (2021): 590, <https://doi.org/10.3343/ALM.2021.41.6.588>.

WHO Policies	Countries	Compliance Effort	Status
For physical distancing, WHO recommends a distance of at least one meter between people to limit the risk of interpersonal transmission. <sup>39</sup>		after self-recovery and until the time of the study visit. <sup>37</sup>	
	Hongkong	Perform PCR tests per day up to 4500 up to >10 000. <sup>38</sup>	Fulfilled
	Indonesia	Maintain a distance of at least 1-2 meters when interacting with other people, especially someone who is at risk of suffering from COVID-19 or only experiencing illness in general. <sup>40</sup>	Fulfilled
	United Kingdom	The policy of physical distancing is carried out by the UK for everyone in public spaces. <sup>41</sup>	Fulfilled
	Hongkong	Minimum 1-meter physical distancing policy with the use of medical masks. <sup>42</sup>	Fulfilled
	Indonesia	Phase 1 vaccine distribution is carried out	Fulfilled

<sup>37</sup> Lee et al.

<sup>38</sup> Emeline Han et al., "Lessons Learnt from Easing COVID-19 Restrictions: An Analysis of Countries and Regions in Asia Pacific and Europe," *Lancet (London, England)* 396, no. 10261 (November 7, 2020): 1525, [https://doi.org/10.1016/S0140-6736\(20\)32007-9](https://doi.org/10.1016/S0140-6736(20)32007-9).

<sup>39</sup> WHO, "Overview of Public Health and Social Measures in the Context of COVID-19," *World Health Organization* 2020., no. May (2020): 5.

<sup>40</sup> Arief Kresna dan Juni Ahyar, "Pengaruh Physical Distancing dan Social Distancing Terhadap Kesehatan Dalam Pendekatan Linguistik," *Jurnal Syntax Transformation* 1, no. 4 (2020): 15.

<sup>41</sup> Hadi Pratomo, "From Social Distancing to Physical Distancing: A Challenge for Evaluating Public Health Intervention against COVID-19," no. 1 (2020): 60, <https://doi.org/10.21109/kesmas.v15i2.4010>.

<sup>42</sup> Han et al., "Lessons Learnt from Easing COVID-19 Restrictions: An Analysis of Countries and Regions in Asia Pacific and Europe."

WHO Policies	Countries	Compliance Effort	Status
Ensuring the distribution of the COVID-19 vaccine is even, especially prioritizing those who are considered to have a high risk. <sup>43</sup>		for health workers as the front liners.	
	United Kingdom	Prioritizing the provision of vaccines to the elderly as those who are susceptible to disease.	Fulfilled
	Uni Emirate Arab	The distribution of the Covid-19 vaccine is evenly distributed to all levels of society.	Fulfilled

The data shows that many countries still show their commitment to complying with WHO recommendations. However, the pandemic problem can not only stop if all countries carry out the fulfillment effectively. In the era of pandemic, future of global health must be built on international law through strengthening the role of WHO and IHR to reflect an impartial review of the COVID-19 response. When the epidemic has passed, WHO must organize its member states to conduct this significant review of international legal powers, including WHO's institutional structure, in order to fulfill the commitment of global health law in tackling future infectious disease threats. In addition, there is a significant contradiction between when a pandemic ends as a biological phenomenon or when the world's governments manage to eliminate it. The success or failure of the global governance regime in dealing with the pandemic problem, the two alternatives will come to the same point, namely the potential opportunity to create a new international legal order.

<sup>43</sup> World Health Organization, "Strategy to Achieve Global Covid-19 Vaccination by Mid-2022," 2021.



#### 4. Conclusion

Covid-19, the latest global threat, has brought about dramatic changes in our society, although infection rates have now been reduced, there is ongoing debate about the prolonged management of the pandemic. The hinderance in handling Covid-19 originates from various sources, ranging from individual states to the failure of international actors. Addressing this global issue requires comprehensive and synergistic efforts from governments worldwide, with a strong focus on state actions. Countries have adopted diverse policies such as travel restrictions, import/export regulations, regional quarantines, and vaccination campaigns to combat the virus transmission. However, these policies often have unintended long-term consequences. At the international level, the World Health Organization (WHO) plays a vital role in ensuring universal health and managing the Covid-19 pandemic while still prioritizing international economic sustainability. Unfortunately, the efforts of the WHO have been deemed ineffective due to several reasons, including the inability to address country-specific root causes, over-reliance on soft law mechanisms, delayed and inflexible Public Health Emergency of International Concern (PHEIC) statements, and the absence of collaborative institutional mechanisms. As the primary global health organization, the WHO is expected to enforce established policies (IHR 2005) and persuade countries to comply. Thus, a significant reform of the international legal order mechanism is urgently required to effectively and efficiently address the current global crisis. The existence of international bodies without enforcement power will continue to affect the effectiveness of resolving future issues between countries. Given that the Covid-19 pandemic poses an unparalleled threat to global health, impacting every country, it is imperative to swiftly transform the global health law landscape to enable a collective response.

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