

Making Covid-19 Vaccination Mandatory: A Discussion from the Perspective of Beauchamp & Childress Principle and Jurisprudence

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ABSTRACT

Known as COVID-19, a respiratory illness caused by the SARS-CoV-2 coronavirus was discovered in December 2019 and the vaccines provided are being hailed as the answer to bringing the world back to normal. As Delta variant together with Omicron infections have surged, and vaccinations have slowed down, this has prompted governments to implement COVID-19 injections mandatory for health workers and other groups at risk. Many countries have decided to make vaccinations mandatory to prevent serious harm to others in a similar community. However, individual rights and autonomy are threatened by this major decision as it has been argued that the consent of vaccination lies on each individual which has led to the issues of the right to bodily integrity. Even so, human life has been devastated by the COVID-19 pandemic, which poses a major threat to public health, food systems, as well as the world of work. The global pandemic has had a catastrophic effect on the economy and society. The governments have the authority to intervene if they are able to demonstrate that such intervention is necessary and appropriate to the accomplishment of another important objective. Mandatory vaccinations say, proponents of mandates, are an acceptable intrusion on an individual's freedom and autonomy in the particular circumstance of COVID-19. Such opinion has led to another issue concerning whether it is morally permissible to do so. The aspect of morality rests upon the four essences of the well-known medical ethics devised by Beauchamp and Childress along with one of the Jurisprudence theories which accepts morality as an essential component of law making, the Naturalism. With regards to the current events of Covid-19, the question of whether the vaccines should be mandated or not lies upon the perspective and debate from the medical views and regulations governing a society. This paper aims to analyze the connection between the Beauchamp and Childress principle and Jurisprudence to achieve conclusive findings and decisions concerning the need of making the Covid-19 vaccination mandatory for every individual.

Keywords: Beauchamp and Childress Principle; Jurisprudence; vaccination mandatory; Covid-19; morality

METHODOLOGY

The research methodology used in writing this journal article is a qualitative method by highlighting the literatures obtained within and outside Malaysia, with reference to primary and secondary sources in the context of making COVID-19 vaccination mandatory from the perspective of Beauchamp & Childress principle and jurisprudence. Examples of reference sources in this study are scientific books, journal and newspaper articles, as well as thesis written by scholars. Online resources such as LexisNexis, HeinOnline, E-Law and West Law were used as well. Data analysis techniques such as comparative approaches and critical analysis were also used as research methodology in completing this journal article.

INTRODUCTION

A. Beauchamp & Childress's *Biomedical Ethics Theory*

In achieving the best possible health outcomes for persons with diverse values living in a pluralistic and multicultural society, we face ethical dilemmas on a daily basis - both minor and major. The dilemma of where we can discover moral action guidelines when there is misunderstanding or conflict regarding what should be done emerges in the face of such diversity. Such guidelines would have to be widely accepted among the religious and the non-religious persons, as well as those from different cultures. These moral guidelines, however, need not be considered absolute, but should be able to serve as powerful action guides especially in health care.

In the 4th century BCE, Hippocrates, a Greek physician-philosopher, directed physicians "to help and do no harm" (Ray & Mathai 2018). Hippocrates is considered to be one of the most outstanding figures in the world of medicine and his medical ethics principles have been used for centuries. Similarly, considerations of respect for persons and justice have been prevalent in the evolution of civilizations. In 1979, Tom L. Beauchamp and James F. Childress, American ethicists, published the first edition of *Principles of Biomedical Ethics* (Holm 2002). They are best known for their work in medical ethics and their development of a framework of four ethical principles in efforts to deal with emerging ethical issues in medical health care (Page 2012).

These four medical principles are respect for autonomy (the respect of a patient's right of self-governance), non-maleficence (the duty to avoid the causation of harm), beneficence (providing maximum benefits and enhancing patient's well-being), and justice (duty to treat patients fairly and

equitably) (Ebbesen, Anderson & Pederson 2012). These four principles discussed here are non-hierarchical, which means that no one principle will "trump" another. The principles are *prima facie* binding thus, shall be fulfilled in every situation if they do not conflict with other principles. Nonetheless, if there is a conflict between the principles, in a specific instance, they ought to be balanced and specified. In implementing the principles, weighing and balancing the potential risks and benefits becomes a vital part of the reasoning process. W.D. Ross, a moral philosopher, claims that *prima facie* obligations are always binding unless they contradict with stronger or stricter obligations. The actual duties of a moral person are decided by assessing and balancing all competing *prima facie* obligations in any given situation.

According to Beauchamp and Childress, the four principles form the core part of a universal common morality and not just solely for biomedical ethics. This is because, in the perspective of these ethicists, morally serious persons share some moral rules, principles, rights, and virtues. For example, they are fully aware that they ought not to kill, to tell the truth, to care for the vulnerable and the young, and not to steal. There is a transparent correlation between these moral rules and the principles of common morality stated earlier by Beauchamp and Childress. For instance, the rule of not to kill is justified by the non-maleficence principle, the rule of telling the truth is justified by the respect for autonomy principle, the rule of care for the vulnerable and the young is justified by the beneficence principle, and lastly, the rule of not to steal is justified by the justice principle. Thus, it can be seen that common morality has normative force, which means it establishes moral standards for everyone and can be used to judge all human conduct. This suggests that

humans would be immoral and unethical if they breach the norms of common morality.

With that being discussed, it can be concluded that common morality has normative force, which means it establishes moral standards for everyone and can be used to judge human conduct. Thus, if a person violates the rules of common morality, the person is considered unethical. In point of fact, the framework of four ethical principles developed by Beauchamp and Childress do not assert that principlism provides a comprehensive moral theory. Rather, they acknowledge the use of these principles in reflecting on moral issues and reaching an ethical conclusion.

B. Relation of Beauchamp & Childress Principle and Jurisprudence

The principle developed by Beauchamp and Childress is best known for its broad scope of application, which encompasses the vast majority of moral issues that arise in the field of health care. These principles represent a fundamental component of a universal common morality that is not limited to biomedical ethics. This is due to the fact that, in the opinion of these ethicists, morally serious people share certain moral rules, principles, rights, and virtues with one another.

On the other hand, the matter of Jurisprudence covers inter alia how the relation of law and morality have a common origin but differs in terms of development. Thus, the discussion on medical ethics and jurisprudence are interconnected and that they are similar on the same basis, which argues on the importance of morality and promoting good for society. The naturalism theory which rests upon the interaction between law and morals is considered to be in line with the essence of Beauchamp and Childress, and that it maintains the ethics element when executing a major decision that

would affect a particular community. However, the positivism approach diverges from eternal and constant criteria of naturalism as positivism proclaims that morality has no bearing on the definition of what constitutes a valid law.

Hence, this analysis demonstrates a more direct connection between the Beauchamp and Childress principles and jurisprudence regarding vaccination issues. The need of making Covid-19 vaccination mandatory has led to an ethical debate as it concerns one's autonomy and the aspect of morality when the government provides no other choice. However, the Beauchamp and Childress principle has laid down the foundation of medical ethics in providing the best health protection for every individual, which in the current circumstances of Covid-19, vaccination is vital to achieve herd immunity and stop the disease from spreading freely. Besides, the naturalism approach views vaccination as the definite way in reducing risks and saving lives, which upheld the concept of morality. With that being said, making vaccination mandatory and obligatory towards the citizens should be considered by the government as a step in providing precise safety measures which are in line with the principles introduced by Beauchamp and Childress together with jurisprudence.

INDIVIDUAL AND COLLECTIVE INTEREST IN VACCINATION

Making the Covid-19 vaccination mandatory is still a contentious debate, and the issue is still as relevant as ever since the world grapples with not only the Delta variant but also concerns with the spread of Omicron, a virus mutation whose risk profile remains largely unknown. Covid-19 is a dangerous and deadly virus and so far in Malaysia, the virus has affected at least 2,736,775 people and killed at least a total of 31,369¹. While

efforts to curb its spread such as lockdowns have upended lives and livelihoods, the virus has also exacerbated conflict and left hundreds of millions of people around the world hungry².

Therefore, the vaccination against Covid-19 has been shown to be one of the safest and effective ways for protecting public health. The vaccination programme will be able to protect the most vulnerable individuals, such as persons with disabilities and weakened immune systems, and children who are too young to be vaccinated. Furthermore, the Covid-19 vaccine has shown to reduce the risk of serious illness, hospitalization, and death from the virus³. The vaccine discovered and made by several manufacturing companies were produced through the study of that vaccine given to individuals in society is indeed effective, safe and stable. This is an important effort and method to reduce the spread of Covid-19 virus from continuing to take the lives of the world's inhabitants while restoring the community's life as usual.

Nonetheless, experts believe that there are a variety of ethical issues to take into account when it comes to vaccine mandates, even though there have been some countries that have sidelined concerns in prioritising the overall benefit of making Covid-19 vaccination mandatory. Thus, the issue of whether making Covid-19 vaccination mandatory is morally permissible to do so will rest upon the four medical principles devised by Beauchamp and Childress along with the Jurisprudence theories.

THE ETHICAL THEORY OF MAKING COVID-19 VACCINATION MANDATORY

A. *Measuring the Four Principles of Beauchamp & Childress*

Respect for Autonomy in Vaccination

Autonomy is expressed as the right of competent adults to make informed decisions about their own medical care. As is the case with the majority of liberties, the right to health entails both liberties and entitlements. The freedoms include the right to self-regulation of one's health and body, including sexual and reproductive rights, as well as the right to be free from coercion, including torture-free and non-consensual medical care.

The entitlements take into account the right to a health protection system that provides equal opportunities for everyone to achieve the best possible health⁴. These findings suggest that individuals can make evidence-based decisions within their knowledge base, such as deciding whether or not to receive a vaccine against the Covid-19. Immunity can be fostered by the right to accept vaccines, but the right to refuse vaccinations could potentially harm the mutual interests of the public. Making the Covid-19 vaccine mandatory for every individual has clearly raised ethical issues concerning one's autonomy. Mandating vaccination could have a negative impact on people's morale, making them feel powerless, robbed of their freedom, and resentful. However, by considering the current pandemic situation, one of the ways to deal with such conflict is to prioritise public health. Despite bringing this concept forward for a definite conclusion, individual's autonomy should also be focused on and that the government should

acknowledge that people have the right to free will, which includes the right to say no. Those who refuse vaccination can be persuaded or a system of nudging can be implemented by, for example, making vaccination the default choice and asking people to opt out.

Nonetheless, respect for autonomy requires appropriate information. There should be an adequate understanding of the intervention for each individual to make their own decision. Everyone involved in the vaccination programme must be given adequate information about the vaccine, ideally in simple terms, prior to its implementation. The eligibility requirements for prioritized vaccination should also be included in this information, in addition to the medical risks and benefits, in order to improve the population's understanding of the prioritization criteria and their perception of the prioritizing as being unbiased. Not only that, this moral ethics also includes being transparent to people. As “the absence of deceit is part of the implicit agreement among moral agents when they communicate with each other,” telling the truth and not to deceive people is an obligation. The practice by schools and universities boards in requiring proof of vaccination by all students will actually violate their will and right to self-determination as the entities are coercing and forcing students to get vaccinated.

Furthermore, when a group of a community begins to question the right they own towards their body, this has led to an existence of conspiracy theories surrounding vaccinations and ‘anti-vax’ movements. Concerns about vaccination have spawned the anti-vaccine movements. This movement views vaccinations programmes as the government interference towards one’s lives. Thus, by virtue of the autonomy principle laid down in *Beauchamp & Childress Principle*, it is essential that healthcare workers make informed decisions based on

the most accurate, reliable, and up-to-date research available to prohibit any of assumptions or fake theories surrounding the Covid-19 vaccines.

Non-maleficence in Vaccination

The principles of non-harm or non-maleficence are more important in public health than the individual's right to privacy or autonomy. “Do the greatest amount of good for the greatest number of people” is the guiding principle of public health interventions like vaccinations (Tharani Loganathan 2021).

Non-maleficence also can be understood as an obligation to cause no harm to other individuals. Even though it was clearly observed that the Covid-19 vaccine could mitigate the risk of disease, it could also be argued that the decision of making Covid-19 vaccination mandatory may cause potential harm to patients and healthcare workers. This is because health care workers may become anxious and stressed as a result of mandatory vaccination, which could lead to a decrease in vaccination rates. For instance, it has been argued that a mandatory vaccination programme could lead to increased skepticism about vaccination in some groups of society, and that those who advocate for mandatory vaccination have not taken into account the possible psychological and cultural consequences. If we are to view from this perspective, making vaccination mandatory may be considered as unethical and maleficence.

However, people's lives and livelihoods have been devastated by the pandemic. Vaccines that have been proven safe and effective in the real world are now available in protecting and ensuring the safety of a community. A return to normalcy is only possible if people are being vaccinated. In a clinical setting, we must look at things differently. Patient safety is always

the priority, and the guiding principle is 'do no harm'. Now that vaccines are available, healthcare workers must be vaccinated or take non-clinical roles without contact with patients. This applies to every individual belonging to a community as, when a person refuses to get vaccinated, this would increase the risk of transmission of the Corona virus disease, and this would indeed cause greater harm.

Hence, there should be no doubt that the benefits of vaccination outweigh any potential harms, at both the individual and community levels.

Beneficence in Vaccination

Generally, the definition of beneficence is the duty to promote and produce good. The beneficence principle is that health care providers have the obligation to act for the benefit of the patient, prevent harm, remove conditions that will cause harm, help persons with disabilities, and rescue persons in danger. These obligations are seen as rational and self-evident and are widely accepted as the proper aim of medicine.

As the principle of beneficence stresses the welfare of others, it could be argued that a mandatory Covid-19 vaccination programme could benefit society as a whole. For instance, if all individuals employed in the health sector were to get vaccinated, it could help to prevent the spread of the virus since healthcare workers play an important role in ensuring a duty of care toward their patients. Thus, it is clearly seen that making Covid-19 vaccination mandatory for individuals employed in the healthcare sectors could provide a rationale for mandatory vaccination as an act of beneficence.

Other than that, making the Covid-19 vaccination programme mandatory is as important towards individuals employed in the security, education and services sectors as

well as those at risk. Basically, this vaccination programme should be applied to the government of societies who are responsible to treat healthcare as a vital duty of public policy and take affirmative steps and actions to provide it to those who need it in order to promote and produce well.

In other words, the act of promoting good by taking the Covid-19 vaccination motivates certain categories of people to act in the best interests towards the people around them, particularly children, young adults, and the elderly who may potentially be in harm's way or the path of potential infection, in order to promote the collective well-being of society as a whole, and the global community in particular. According to Rudolf Von Ihering, the welfare of society is more important than a single person. Thus, while an individual is free to pursue his own interests, his private interests shall be balanced against the state's or common interest in order to ensure the good of society.

Justice

To answer the question of what justice is to a one narrow and specific definition would be impossible as it means different things to different groups of people. However, it has been suggested that the most ideal way to understand the meaning or idea of justice is by distinguishing the different senses in which the word justice is used.

According to John Rawls, the principles of social justice are necessary to make a rational decision. The idea of absolute freedom is a myth especially if it involves social settings. All fundamental rights and freedoms should be subjected to some limitations in a society where an individual's rights must be balanced against their responsibilities towards society. It is important to exclude personal self-interest when deciding the basic principles of justice, as the main principles of justice is to ensure

secured generalized wants or primary social goods.

Justice, from the viewpoint of ethics, is defined as ensuring fairness and as equal distribution of benefits and burdens. In the healthcare industry, it is suggested that justice should be at the forefront of every doctor and nurse's mind when making an ethical decision. This links with the ethical issue of making vaccination mandatory for every individual, especially those employed in the health, security, education and services sectors as well as those at risk. It could however be argued that it is not morally justified since each person has the right to make their own decisions and express them freely without government interference. Hence, the choice of taking the Covid-19 vaccine is in the hands of oneself as forcing someone to take the vaccine would be immoral and unjustified.

Nonetheless, in order to balance the state and an individual's common interest and safety, the government should be able to amend this right. Securing public health may be seen as morally unjustified to some people but it is not unlawful to make the Covid-19 vaccination mandatory to these groups of people to prevent harm to the members of the public. Freedom of right should be limited especially when it involves health and society at large. According to Beauchamp and Childress, justice requires increasing utility in a mutually fair and harmonious atmosphere that is open to contextual values and needs. Hence, referring to the vaccination issue, social justice can be served to encourage citizens or mandating them to receive the Covid-19 vaccine in order to forestall public health outbreaks of coronavirus disease.

B. The Naturalist and Positivist Schools of Jurisprudence Point of View

Naturalist School of Jurisprudence

Naturalism regards that humans can use their inherent intelligence to discover a set of moral and ethical principles that are part of their nature. Between 'gods and men,' only natural law stands in the way. Despite the fact that it makes use of human reasoning and observation, it acknowledges the existence of a divine creator behind nature and, as a result, something inherently normative about the ends that nature provides. With no such intermediary, neither conflicts between Divine Law and Human Law, nor disputes between religious groups can be resolved in a way that does not result in a state of perpetual war.

Besides, the theory of natural law is said to have existed prior to the existence of any political order or legislature, or even the need for human comprehension. This is further explained by the concept of natural law, which states that human beings are capable of distinguishing between what is right and what is wrong. Humans don't learn about natural law as they create it for themselves by making the right choices. As a result, it can be said to be accessible by reason. In the ancient Greeks, the concept of natural law was already well-known, but it was further developed by philosophers. Aristotle, Plato, and Thomas Aquinas are three of the most influential philosophers who contributed to the development of natural law.

The intersections of morality and religion involve the relationship between religious views and morals and this includes in the discussion of what Naturalism is all about. In the context of making Covid-19 vaccination mandatory, this would raise issues on how religions view this major

decision. Vaccination and religion are intertwined in a range of ways as vaccinations have the potential to save lives, and no major religion prohibits them, which some consider it an obligation.

Controversy over what constitutes ethical vaccine research and policy has recently erupted, particularly among religious leaders and scholars who advocate for religious freedom. When ethical concerns are valid, they can slow vaccine advancement. It is critical to assess whether these ethical concerns are legitimate and what ethical weight they should be offered, if any. It is currently unknown how many people have refused or will refuse a vaccine due to personal ethical concerns. The rate may vary greatly between countries or cultures. However, given the ethical issues raised by vaccine development and the number of religious adherents, the number could be very high in some cases.

Vaccination from the perspective of Naturalism, is to reduce suffering and to compensate those who were most at risk. But the main issue to be addressed here is concerning the tension between individual interest and public interest. Nevertheless, herd immunity, which could be achieved through Covid-19 vaccines, is a classic example of a collective good and will be critical if we are to survive this global pandemic in the short term. Hence, the refusal of getting vaccinated should not be raised from the viewpoint of ethics or morality as it is to achieve good as a whole. Most religions do not prohibit vaccination as it is in line with the elements of morality laid down by each of every religion and the basis of vaccination is to promote safety and minimize risk towards everyone.

Islam, Malaysia's official religion, encourage individuals to be vaccinated. The Islamic point of view on vaccination is that it could preserve and protect one's life and this is one of the highest objectives of the Islamic

or *Syariah* Law. Islamic scholars' has come to a conclusion of where the Covid-19 vaccine is *halal* and lawful (Schonfeld 2021). When an individual gets vaccinated against a disease, they are actually being rewarded by God Almighty. There is a verse in the Holy Quran that states that if an individual saves one's life, it is as if they saved the life of all humanity. Thus, they are performing the most sacred and honorable act of worship, protecting life. The decision to get vaccinated is indeed a virtuous and good option and is in line with the principle of morality underlined in the Islamic Law. This also means that, Islamic Law has the similar view on vaccination as Naturalism did because both concepts highlight the importance of the morality element when one chooses to get vaccinated.

Furthermore, *hifz al-nafs* is one of the most important maqasid in Islam (protecting of life). Eating, drinking, and punishing those who endanger life are among the ways we are commanded to protect and preserve life. Any action that could result in the death of a human being is also forbidden in Islam. Among the maqasid regarding the issue of vaccines is, when two *mafsadah* or harmful things collide, the least harmful one wins. In the context of vaccination, it is better to have a mild fever and other side effects than to risk contracting a deadly disease.

Thus, the Natural Law theory believes that by getting vaccinated, one has actually done a good act and is considered as a moral action. Islamic Law holds a similar view, as protecting and preserving life is vital by virtue of the maqasid shariah principles and not deviating from the morality element of Naturalism. Although some part of the community refused to get vaccinated, in a world where we place such a high value on individual liberty, the pandemic's spread has shown us how interconnected people are and how utterly dependent we are on one another. Perhaps now is the time to reexamine our

conception of individual freedom or autonomy and what it really entails. Hence, it is permissible to make Covid-19 vaccination mandatory.

Legal Positivism

Legal positivism is one of the main schools of jurisprudence that emphasizes the common nature of law, that it is socially constructed. From the perspective of the advocates of legal positivism, they believe that the only legitimate source of law derives from written rules, regulations and principles that were enacted or recognized by a superior authority that is usually known as a governmental entity. Therefore, the positivists define law as a command of a sovereign authority backed by sanctions and their ideology of law is simply to be obeyed as it is the will of the sovereign.

Positivists hold the position that it is nothing in our business to investigate what kind of legislation should exist. For instance, John Austin argues that laws are rules, which he defines as a type of command and it is the task of the legislator in making law. Some jurists, on the other hand, see their role as one that encompasses all questions of 'is' and 'ought'. People who disagree with the legislation have no recourse to higher morality or principles than those expressed in the laws. When it comes to social constructions, law is seen as an example. The making of laws is purely a show of strength and a demonstration of authority, not an attempt to achieve any higher moral or social ideals.

The positivist school of thought's approach is the total opposite of the naturalists'. They do not judge laws by the account of morality, justice and religion. Their standpoint is solely based on the power of the superior instead of being based on the idea of good or bad. Legal positivism upholds the separability of law and morality because

it is contended that law is what the state requires of society as whole, while morality is merely an individual's perception on what is considered right or wrong.

In essence, making Covid-19 vaccination mandatory for every individual, especially those employed in the health, security, education and service workers as well as those at risk is legally justifiable in the actual spirit of law and justice. For example, the Covid-19 vaccination imposition in Malaysia being implemented by the Ministry of Health, Khairy Jamaluddin, is in line with the legal positivism theory. From a positivist view, it is legally justifiable for a government to make the Covid-19 vaccination mandatory to these groups of people in order to prevent harm to the members of the public while imposing sanctions to those who do not obey the rules. The main priority for Malaysians right now is to reach herd immunity to protect vulnerable groups who are unable to get vaccinated. According to Herbert Spencer, preservation of the species shall take precedence over the preservation of an individual. Therefore, all freedom of rights shall not be absolute when it involves health and the society at large.

ACCEPTANCE AND ATTITUDES TOWARDS THE VACCINATION

As discussed earlier, respect for patient autonomy can be defined as the right of competent adults to make informed decisions about their own medical care. Thus, individuals have the right to make decisions within their knowledge base, that is in deciding whether or not to receive the Covid-19 vaccination. Immunity can be fostered by the right to accept vaccines, nonetheless, the right to refuse vaccinations could potentially cause harm to the public.

Thus, it can be seen that the freedom to act against one's self interest is not absolute. John Rawls is of the opinion that the

principles of social justice are vital to make a rational decision. The idea of absolute freedom is a myth especially if it involves social settings. Hence, an individual's fundamental rights and freedoms shall be subjected to certain limitations. This restriction is necessary to balance the state and an individual's self-interest and safety. For example, only vaccinated individuals are allowed to dine-in at the restaurants. Those who are not vaccinated shall obey every command and decisions made by the Government of Malaysia. This is to respect the rights of the individuals that have decided to take the vaccination.

According to Herbert Spencer, it is true that every person has freedom to do all that he wills, provided he does not infringe the equal freedom of others⁵. Human beings need freedom, peace and stability in their lives and in order to satisfy these needs, each individual has to establish and follow moral principles that encourage them to co-operate and find a common ground with one another.

Malaysia's Current Situation

In Malaysia, vaccination against COVID-19 will now be required and mandatory for all federal government employees, with exceptions only allowed on medical grounds. It comes as the country aims to increase vaccination rates, with the goal of vaccinating 90% of the population by the end of the year. Individuals who do not receive their vaccinations on time will be subject to disciplinary action, according to the Department of Health. However, the government owns no intention in making the vaccination mandatory but there are few restrictions that unvaccinated individuals would have to follow. For instance, only vaccinated individuals are allowed to dine-in at the restaurants. Thus, we can see that the concept of legal positivism is applied in the current circumstances in Malaysia. Citizens

would have to obey every command and decisions made by the Government of Malaysia and sanction will be imposed if each and every individual fails to comply. Moreover, the government has announced the Covid-19 standard operating procedure (SOP) and that every citizen would be obligated to abide. The government had also laid down three categories of offences for the violation of the SOP and each offence is accompanied by a different range of fines. This actively illustrates the idea of legal positivism theory being corporated in the Covid-19 situation in Malaysia.

The application of the legal positivism theory is essential in making sure that the herd immunity could be achieved, to protect every life against the Covid-19 disease. Vaccination is the most effective public health interventions in promoting good health, which is vital for the government to enforce strict regulations when one disobeys such rules that could protect a community as a whole. Besides, the government provides the best guidelines and measures to fight against the pandemic, thus, if a person violates any of the said regulations, sanction must be imposed as an irresponsible act of one person could affect everyone's life. The notion of legal positivism surrounding the measures of controlling the spread of Covid-19 disease should not be viewed as aggravating. Moreover, the existence of anti vaccination activists and the widespread fake news regarding the Covid-19 vaccines, makes it abundantly clear just how broken the public sphere is in our society. Anti-vaccination messages are generally easier to find online, owing to their focus on consumer-oriented and user-friendly content, as opposed to science-based articles on the pro-vaccine debate (Pullan & Dey 2021). The scientific community, in addition to producing evidence-based research, has a responsibility to raise public awareness of pro-vaccine

information online. An increased level of public engagement and consumer-friendly messaging may be helpful in this endeavor.

Regardless of the above facts, a set of regulations should indeed consist of a morality element as portrayed in the naturalism theory. Naturalism theory concerns the combination of perceptions and values that have been linked to a variety of religious traditions. In Malaysia, the regulations and specifications relating to the Covid-19 outbreak have very much indicated the element of morality. This has something to do with the fact that the regulations constructed by the government are in line with the ethics and moral principles laid down in every religion. Discussing the circumstances in Malaysia, Islam is the religion of the Federation, but other individuals may practice their beliefs safely and peacefully. Every religion acknowledges the significance of vaccines and the critical nature of individual and community health protection. Not a single one prohibits vaccination and because of the potential to save lives, some consider it an obligation.

Thus, the command executed by the Ministry of Health in ensuring every citizen to be vaccinated, is vital and crucial through the eyes of the naturalism theory. The only goal to be achieved, is the herd immunity among the community and this can only be reached through a sufficient number of individuals, developing protective antibodies against the future infection. By getting vaccinated, it would protect each and every person in the society and help to cease the spread of the Covid-19 disease. When everyone's life is protected through a structured policy which underlines the principle of morality as portrayed in the naturalism theory which has been embraced through Malaysia's current SOPs on Covid-19, each and every step taken is regarded as ethical and righteous and is beneficial to every individual in the community. Hence, it

can be concluded that Malaysia has successfully adopted the idea of naturalism in constructing the policy and SOPs in managing the Covid-19 health crisis, which uphold the element of morality in the said regulation.

To sum up everything that has been stated, we are in view that the legal positivism and naturalism theories are the best approach when it comes to the making of new sets of rules and regulations. The current regulations on Covid-19 introduced by the Malaysia government have very much portrayed positive effects, significantly when the daily reported cases have continued to decline. Thus, the two mentioned Jurisprudence theories are regarded as a flexible avenue in establishing a functional and practical law for the benefit of the community at large.

CONCLUSION

In conclusion, by applying and analyzing the four medical principles devised by Beauchamp and Childress along with the Jurisprudence theories, making Covid-19 vaccination mandatory is morally permissible to do so in order to promote the collective well-being of society as a whole.

However, even if a vaccine mandate is justified, the legislation must allow for clearly defined exemptions, such as in the case of allergies, or any other medical conditions, and the authorities shall not use coercion to get people vaccinated as every person has the respect for autonomy. As mentioned earlier, respect for autonomy requires appropriate information for individuals to make evidence-based decisions within their knowledge base, that is to decide whether or not to receive a vaccine against the Covid-19. Immunity can be fostered by the right to accept vaccines, but the right to refuse vaccinations could cause harm to the public. Furthermore, by virtue of

the autonomy principle laid down in *Beauchamp & Childress Principle*, it is also vital that healthcare workers make informed decisions based on the most accurate, reliable, and up-to-date research available to prohibit any of assumptions or fake theories surrounding the Covid-19 vaccines. This is to improve the society's understanding of the benefits of getting vaccinated.

The act of promoting good by taking the Covid-19 vaccination motivates people to act in the best interests towards the people around them. The welfare of the society is more important than a single person. Thus, while an individual is free to pursue his own interests, his private interests shall be balanced against the state's or common interest in order to ensure the good of society. Furthermore, the Islamic scholars' has also concluded that the Covid-19 vaccine is *halal* and not unlawful. When an individual gets vaccinated against a disease, they are actually being rewarded by God Almighty. There is a verse in the Holy Quran that states that if an individual saves one's life, it is as if they saved the life of all humanity. Hence, the decision to get vaccinated is indeed a virtuous and good option because it protects one's very own life and the lives of the people around them.

NOTES

¹ Ministry of Health Malaysia, 'COVID-19 Deaths in Malaysia' Covid Now, <https://covidnow.moh.gov.my/deaths/>. (28 December 2021)

² USGLC, 'COVID-19 Brief: Impact on Food Security', U.S Global Leadership Coalition, 12 August 2021, <https://www.usglc.org/coronavirus/global-hunger/>. (28 December 2021)

³ Mohd Zamre Mohd Zahir, Tengku Noor Azira Tengku Zainudin, Ramalinggam Rajamanickam, & Muhamad Sayuti Bin Hassan, 'Kewajipan Suntikan Vaksin Dan Isu Hak Asasi Manusia' (2021) E-Proceedings Of The Tuanku Jaafar Conference And

Workshop 2021 (Tjc 2021) Access To Justice: Substantive & Procedural Issues, pp. 513-523.

⁴ Tengku Noor Azira Tengku Zainudin, Mohd Zamre Mohd Zahir, Ahmad Azam Mohd Shariff, Ramalinggam Rajamanickam, Ong Tze Chin, Zainunnisaa Abd Rahman, Nor Hikma Mohamad Nor, Syafiq Sulaiman, Asiah Bidin, Murshamshul Kamariah Musa & Kamaliah Salleh, 'Legal Exploration of Right to Health' (2021) Journal: Pertanika Journal of Social Sciences & Humanities (JSSH). 29(S2): 221-232, p. 3.

⁵ A. Mingardi, Equality and Freedom in Herbert Spencer's Principles of Ethics [2019] Econ Liberty. <https://www.econlib.org/library/Columns/y2019/MingardiSpencerethics.html>. (24 December 2021)

REFERENCES

Afolabi, M.O.S. 2018. Vaccination. *Research Gate*. https://www.researchgate.net/publication/305377218_Vaccination (Accessed on 18 October 2021).

Anon. 2021. Factbox: Countries making COVID-19 vaccines mandatory." *Reuters*. 16 December. <https://www.reuters.com/business/healthcare-pharmaceuticals/countries-making-covid-19-vaccines-mandatory-2021-08-16/>. (Accessed on 17 December)

Australian National Imams Council. 2021. Coronavirus (COVID-19) Vaccine Fatwa (Islamic Verdict). <https://www.anic.org.au/wp-content/uploads/2021/02/AFC-Coronavirus-COVID-19-Vaccine-Fatwa.pdf> (Accessed on 17 October 2021).

Basil, V. 2020. Principles of Clinical Ethics and Their Application to Practice. *Karger Journals*. 4 June. <https://www.karger.com/Article/FullText/509119> (Accessed on 18 October 2021).

- Ebbesen, M., Anderson, S. & Penderson, D. 2012. Further Development of Beauchamp and Childress' Theory Based on Empirical Ethics. *Journal of Clinical Research & Bioethics*.
- Ellyatt, H. 2021. WHO on Vaccine Mandates: They Should Be 'A Last Resort'. *CNBC*. 7 December. <https://www.cnbc.com/2021/12/07/who-on-vaccine-mandates-they-should-be-a-last-resort.html> (Accessed on 10 December 2021).
- Engku Ali, Engku Muhammad Tajuddin, Zulkifli Mohd, & Mohammed Muneer'deen Olodo Al-Shafi'. 2017. Vaccination from the Perspective of Islamic Legal Maxim. *International Journal of Academic Research in Business and Social Sciences* 7(12): 8. 2222-6990.
- McCormick, T.R. N.d. Principles of Bioethics. *Principles of Bioethics UW Department of Bioethics & Humanities*. <https://depts.washington.edu/bhdept/ethics-medicine/bioethics-topics/articles/principles-bioethics>. (Accessed on 12 November 2021).
- Mohd Zamre Mohd Zahir, Tengku Noor Azira Tengku Zainudin, Ramalingam Rajamanickam, & Muhamad Sayuti Bin Hassan. 2021. Kewajipan Suntikan Vaksin Dan Isu Hak Asasi Manusia. *E-Proceedings Of The Tuanku Jaafar Conference And Workshop 2021 (TJC 2021) Access To Justice: Substantive & Procedural Issues*. 513-523.
- Osbourne, R.M & Clark, S. J. 2021. Should the SARS-CoV-2 Vaccine be Mandatory for Nurses? An Ethical Debate. *British Journal of Nursing* 30(2).
- Rahim Rahimy, Tarrence Tan & Martin Carvalho. 2021. No Intention to Make Covid-19 Vaccination Mandatory Among Civil Servants, says Minister. *The Star*. 12 October. <https://www.thestar.com.my/news/nation/2021/10/12/no-intention-to-make-covid-19-vaccination-mandatory-among-civil-servants-says-minister>. (Accessed on 1 November 2021).
- Ray, S. & Mathai, S.S. 2018. Ethics in Medicine and Research: Responsibilities of a Medical Scientist. *Journal of Marine Medical Society* 2(2): 93-95.
- Savulescu, J. 2021. Good Reasons to Vaccinate: Mandatory or Payment for Risk? *Journal of Medical Ethics* 47:78-85.
- Tengku Noor Azira Tengku Zainudin, Mohd Zamre Mohd Zahir, Ahmad Azam Mohd Shariff, Ramalinggam Rajamanickam, Ong Tze Chin, Zainunnisaa Abd Rahman, Nor Hikma Mohamad Nor, Syafiq Sulaiman, Asiah Bidin, Murshamshul Kamariah Musa & Kamaliah Salleh. 2021. Legal Exploration of Right to Health. *Journal: Pertanika Journal of Social Sciences & Humanities (JSSH)*. 29(S2): 221-232.
- The College of Physicians of Philadelphia. 2018. Cultural Perspectives on Vaccination. <https://www.historyofvaccines.org/content/articles/cultural-perspectives-vaccination> (Accessed on 17 October 2021)

World Health Organization (WHO). 2020. Impact of COVID-19 on People's Livelihoods, their Health and our Food Systems. 13 October. <https://www.who.int/news/item/13-10-2020-impact-of-covid-19-on-people's-livelihoods-their-health-and-our-food-systems>. (Accessed on 10 December 2021).

Zaheena Rasheed. 2021. Should COVID-19 vaccines be mandatory? Coronavirus pandemic News. *Al Jazeera*. 18 October. <https://www.aljazeera.com/news/2021/10/18/should-covid-19-vaccines-be-mandatory>. (Accessed on 22 October 2021)

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