

SKRIPSI

**INTERNATIONAL LAW REVIEW ON THE RIGHT TO
MOVE THROUGH ENTRY REGULATION AND
TRAVEL RESTRICTION DURING COVID-19**



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MAKASSAR
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**INTERNATIONAL LAW REVIEW ON THE RIGHT TO MOVE THROUGH
ENTRY REGULATION AND TRAVEL RESTRICTION DURING
COVID-19**

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**INTERNATIONAL LAW REVIEW ON THE RIGHT TO
MOVE THROUGH ENTRY REGULATION AND
TRAVEL RESTRICTION DURING COVID-19**

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THESIS

As a Final Thesis in the Context of Completion of Undergraduate Studies
of the Department of International Law, Legal Studies Program

**INTERNATIONAL LAW DEPARTMENT
FACULTY OF LAW
HASANUDDIN UNIVERSITY
MAKASSAR
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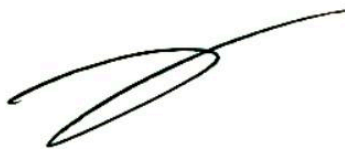
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ABSTRACT

ANDI FIRYANI SYABINA (B011191329) *“INTERNATIONAL LAW REVIEW ON THE RIGHT TO MOVE THROUGH ENTRY REGULATION AND TRAVEL RESTRICTION DURING COVID-19”*. Supervised by lin Karita Sakharina and Birkah Latif.

This study aims to determine the provisions under international law on protection regarding the right to move through entry regulation and travel restrictions during the Covid-19 outbreak and the implementation in reality during the Public Health Emergency of International Concern.

This study uses normative research using statute approach and comparative approach. The types and sources of legal materials that used in this study are primary and secondary legal materials. The method used to collect those legal materials is by using literarute research method then analysed by using descriptive method.

As the results of this study, are 1) limiting freedom of movement is attributable during Covid-19 since it is proportionate and 2) entry regulation and travel restrictions must be fulfil the criteria of health measures standard.

Keywords: Entry Regulation, Right to move, and Travel Restrictions

FOREWORD

All praise be to Allah subhanahu wata'ala for His power, grace and favor to facilitate and move the heart so that researchers can complete the final thesis with the title **"International Law Review on The Right To Move Through Entry Regulations And Travel Restrictions During Covid-19"** which is a requirement for completing a bachelor's degree (S1) and for obtaining a Bachelor of Law degree at the Faculty of Law, Hasanuddin University.

With all humility, the author dedicates this thesis to author's father namely Budiman Tawakkal Akbar and author's mother Andi Kisnah Bintang who with love, sincerity and patience have given birth to and educated the writer to be a useful person. To the author's brother and sister-in-law, Andi Firyal Andhika and Mutia Nadira Alimuddin who have been generous and have expressed their prayers and support for the writer. The author also does not forget to thank the niece and nephew of the author, Moira and Reinka who always entertain the author during writing this thesis. And all the big family, Laskar Akbar and Petta Bintang Fam that the writer cannot mention one by one. The author is grateful for all the support and prayers.

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CHAPTER I

INTRODUCTION

A. Background

Since they are made in the image of the Almighty God, humans have inherent and unalienable rights to defend and safeguard their dignity from the law, the State, the government, and even other people. Human rights are a set of freedoms that are inherently innate to everyone.

Human rights are universal, which means applicable to everyone equally and without bias. Since everyone has the right to enjoy their human rights without restriction, they serve as a minimum standard for all people everywhere. But as life becomes more complex, globalization gave rise to an increasingly individualistic nature. Human rights abuses have been a common issue in both domestic and international life as a result of the advancement of the times.

In 1948, the Universal Declaration of Human Rights (hereinafter referred to as the UDHR) was recognized as the document that would serve as the first regulation that would govern human rights. In times of conflict, in communities that are oppressed, and in our joint efforts to ensure that everyone is able to enjoy their human rights, the UDHR has served as a source of inspiration for us to confront injustice. However, the ratification of the UDHR wording alone was not sufficient to eradicate the roots of tyranny in a variety of countries; additional steps were necessary.

To make progress and protection legally enforceable, the International Covenant on Civil and Political Rights (hereinafter referred to as the ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (hence referred to as the ICESCR) were founded. Both the ICCPR and ICESCR are binding on all states that have ratified them. On October 28, 2005, Indonesia ratified the ICCPR by Law of the Republic of Indonesia Number 12 of 2005 regarding the Ratification of the International Covenant on Civil and Political Rights.

All countries that have ratified the ICCPR are expected to safeguard the civil and political rights that are outlined in it. These rights include the freedom to voice one's thoughts, the right to an impartial jury, the right to one's own life, and the freedom to assemble with others. The ICCPR mandates that nations provide equality before the law and safeguard minorities' rights in addition to outlawing these acts.

As of February 2023, 173 countries have ratified the ICCPR. However, some countries that have ratified the treaty have been criticized for not fully implementing its provisions or for violating the rights that it protects. The ICCPR has also been the subject of some criticism itself, with some arguing that it places too much emphasis on individual rights and not enough on collective rights or social and economic rights.

The ICCPR has set freedom-oriented special rights that states may not take away from their citizens. The ICCPR specifically classifies certain rights as non-derogable rights, which are rights that cannot ever be

restricted. And rights that, under certain conditions, the state may nonetheless curtail or restrict (derogable rights).

Non-derogable rights are fundamental human rights that are unaffected by emergencies or concerns about national security. These liberties are seen as fundamental to human dignity and are inviolable in all situations. Rights that cannot be waived include:

1. the right to life;
2. the prohibition of torture;
3. the abolition of slavery; and
4. the ban on retroactive application of criminal laws;

Derogable rights, on the other hand, are those that may be curtailed or abandoned in the interest of public safety. Any such restrictions or suspensions, however, must be appropriate, required, and must not compromise the right's fundamental principles. Derogatory rights consist of:

1. The right to liberty and security of person;
2. The right of freedom of expression;
3. The right of freedom of movement.

Freedom of movement as a derogable rights means that in times of emergency or public danger, governments may temporarily restrict this right for the sake of public safety. Any limitations, nevertheless, must be reasonable, necessary, and nondiscriminatory. This means that any limitations on the freedom to move around must be reasonable in their extent, minimal in their effects, and not motivated by factors that are offensive to some people, including race, ethnicity, or religion.

In the UDHR and the ICCPR, the right to freedom of movement is expressed in three different ways. First of all, it includes the freedom to roam across a nation and to select where one lives. Second, it includes the freedom to leave any country, including one's own, which is spelled out as the right to cross an international boundary. This aspect of freedom involves the right to travel across international borders. Thirdly, it includes the right to return to one's homeland whenever one so chooses.¹

Despite the fact that, as was previously said, the right to freedom of movement is recognized by international law, it is equally important to keep in mind that, in an organized society, there cannot be liberty without social oversight. Therefore, the right to freedom of movement is not absolute and may be restricted. According to Article 29(2) of the UDHR, no one's rights and freedoms may be restricted in any way other than by the law. In a democratic society, morality, public order, and the general welfare must all be satisfied in order for everyone's rights and freedoms to be maintained. On the other hand, Article 12(3) of the ICCPR states that in cases of public health or national circumstances, the freedom to move about freely may be restricted.

The World Health Organization (WHO) has declared the coronavirus (Covid-19) a global pandemic due to its huge and rapid spread as of March 11, 2020. Based on information provided by the WHO, there were 64,350,473 confirmed cases of Covid-19 as of December 4, 2020, and

¹ Article 13(2) of the UDHR and Article 12(4) of the ICCPR.

1,494,668 people died as a result. Since this virus has spread, nations around the world have issued policies to prepare for it. Limiting people's movement and activity in public places is one of the tactics being implemented to combat the spread of COVID-19. This course of action was performed to flatten the COVID-19 spread curve.²

Global social and economic upheaval, financial losses, a decline in the tourism sector, and a recession have all been brought on by the responses. Many educational institutions have been closed completely or in part. Conspiracy theories and misinformation have spread like never before, fueling xenophobia and discrimination against persons of Chinese descent.

During a pandemic, international human rights laws protected people's rights. Everyone has the right to the greatest healthcare possible, according to Article 4 of the ICCPR, and governments are required to take action to stop dangers to the public's health and provide those in need with medical treatment. International human rights law also recognizes that certain rights can be justified by having a legal basis, being absolutely necessary, being based on scientific evidence, not being applied arbitrarily, respecting human dignity, being subject to the law, and being proportionate to achieving the goal in cases where there are serious threats to society and national security.³

² Ari Wirya Dinata, 2021, *Travel Ban Policy in Handling Covid-19 Outbreak*. In *2nd International Conference on Law and Human Rights 2021*, Atlantic Press, ICLHR 2021, page 87

³ W. H. Sheng, Coronavirus disease 2019 (COVID-19), *J. Intern. Med. Taiwan*, Vol. 31, No. 2, 2020, page 61–66.

Many nations have put in place lockdown regulations to stop the spread of COVID-19. Lockdown procedures have generally been of a similar character, but they have varied in their degree of strictness. In this research, there will be several countries that will be taken as examples to compare regulations regarding their entry regulations and travel restrictions, namely Indonesia, Italy, and United States. These three countries are representative of countries in Asia, Europe and America. The author sees that in the application of travel restrictions there is still a lack of implementation of proportionate.

One of the nations that imposes travel restrictions on citizens traveling within its borders as well as to and from other nations is Indonesia. Instead of going into total lockdown during the Covid-19 outbreak, Indonesia implemented extensive social restrictions (PSBB). The Government has also put into place the Enforcement of Community Activity Restrictions (PPKM) in addition to PSBB. Where PPKM is performed at varying intensities depending on the location.

As Europe became the epicentre of the Covid-19 pandemic, since the middle of March more and more countries adopted containment strategies including travel restrictions with different intensity and timing. As the government battled to contain the spread of a Covid-19 pandemic that has hampered the economy, threatened to overwhelm public health care, and claimed more lives than any country other than China, Italy became the first country in Europe to impose stringent travel restrictions. In

the early Covid-19 outbreak, Italy prohibited people from going outside to exercise, where this impedes the space for residents to move due to the application of rules that are not in accordance with standard health measures.

Lastly, United States is also one of the countries in the world that implements entry regulations and travel restrictions that are not in accordance with standards, disproportionate, and even discriminatory. On January 31, 2020, the state administration of the United States enacted a travel ban that only applied to foreign visitors from China, with no necessity for symptom screening upon entry or traveler quarantine, despite the virus at this time already being known to exist in Italy, Iran, Spain, Germany, Finland, and the United Kingdom.

Even so, limiting people's freedom of mobility will slow down how quickly they move economically. Lockdown procedures must, however, nevertheless be in keeping with the objective of preserving life and health. International Health Regulations (hereinafter IHR 2005) as a constitution owned by the WHO for countries that are bound to continue to respect human rights during a pandemic. IHR 2005 itself has a goal to help the international community in dealing with diseases that threaten the world community, including the Covid-19 Virus. The provisions in IHR 2005

provide protection for citizens of member countries from the spread of disease across countries.⁴

In response to a public health emergency of international concern (hereinafter PHEIC), state parties may adopt more rigorous health measures than those recommended by relevant international organizations under Article 43 of the International Human Rights Act of 2005. This item permits member governments of the World Health Organization (WHO) to limit international travel by using extra casuistry rules (additional measures). These new health precautions must not, however, place further restrictions on overseas travel.

Additionally, refugees and asylum seekers are at greater potentially risk of contracting Covid-19. It has called into question the ability of countries and desire to uphold their international duties, and it is likely to continue to disproportionately affect the most vulnerable, particularly those who have been ejected from their homes.

For this reason, a study is needed on the protection of freedom of movement against entry regulation and travel restrictions during the Covid-19 outbreak. In general, this research certainly needs to be carried out in order to provide information about how entry regulation and travel restriction policies are implemented for the tourism industry.

⁴ Rika Kurniaty, Peraturan Kesehatan Internasional 2005: Perkembangan Substansial Untuk Hukum Internasional Dan Keamanan Kesehatan Global. Masalah-Masalah Hukum Vol.50, No.4, 2021, page 435.

This study intends to analyze the implementation of the steps taken by each country in the right to move policy as a right that can still be reduced or limited by the state during a public health emergency during Covid-19.

B. Research Questions

Based on the background described above, the author in this study took the following research questions:

1. How does international law provide protection against right to move through entry regulation and travel restriction during Covid-19 outbreak?
2. How is the implementation of entry regulation and travel restriction in reality during Public Health Emergency of International Concern?

C. Research Objectives

Based on the problem statements above, the author has the following research objectives:

1. To determine the type of international legal protection available to those who wish to travel or enter countries with entry restrictions because to the Covid-19 outbreak.
2. To find out the implementation entry regulation and travel restriction in reality during Public Health Emergency of International Concern.

D. Research Benefits

Moving on from the purpose of this research, it is expected to provide theoretical and practical benefits, namely as follows:

1. The findings of this study are anticipated to be a source of information, knowledge, and understanding for Hasanuddin University's work on the development of international law, particularly in relation to concerns about the ability to travel and enter countries without limitation during the Covid-19 outbreak;
2. The findings of this study are anticipated to contribute to public understanding of international human rights, particularly as it relates to freedom of movement.

E. Research Originality

This research was originally carried out by the author in looking at legal issues regarding the right to move through entry regulation and travel restrictions during the Covid-19 outbreak. Based on the author's analysis to provide a comparative picture, the results of previous research regarding freedom of movement are presented, the authors attach previous research as comparison material for this paper:

1. Thesis on behalf of Muhaimin Maulida, Faculty of Syariah, Majoring Hukum Tata Negara, Universitas Islam Negeri Antasari Banjarmasin, 2022. Title: "*Perlindungan Hukum Atas Hak Kebebasan Bergerak Masyarakat Kota Banjarmasin Di Masa Pandemi Covid-19.*" The formulation of the problem statements are (1) Bagaimana perlindungan hukum terhadap kebebasan bergerak pada masa pandemi Covid-19 di Kota Banjarmasin?, and (2) Bagaimana peraturan kebijakan yang diterbitkan Pemerintah Kota Banjarmasin dalam membatasi hak

kebebasan bergerak di masa pandemi Covid-19?. As reflected in the formulation of the problem, the research above discusses the protection of freedom of movement during the Covid-19 pandemic by using national regulations as the legal basis and analyzing the legal protection of freedom of movement in the context of policies issued by the Banjarmasin City Government. In the author's research, in contrast to the research above, the authors did not use Banjarmasin City Government policies as the main basis but instead used the UDHR, ICCPR, and IHR 2005. The author also does not analyze the legal protection of freedom of movement in the context of national law but in the context of international law.

2. Jurnal HAM Volume 12, Number 2 of 2021 by Ari Wirya Dinata and M. Yusuf Akbar with title "*Pembatasan Hak Untuk Bergerak (Right To Move) Melalui Larangan Masuk Dan Pembatasan Perjalanan Selama Penyebaran Virus Covid-19 Menurut Hukum Internasional dan Hukum Indonesia (Limitation Of The Rights To Move Through Entry Regulation And Travel Restrictions During Covid-19 Virus Outbreak Under International Law And Indonesian Law)*." This journal examines the regulation of travel restrictions and entry restrictions during the Covid-19 pandemic from the perspective of international legislation using ECHR, ACHR, ICCPR and IHR 2005. And also using the perspective of Indonesian law in limiting the right to move. However, in this study the authors used legal instruments UDHR, ICCPR and IHR 2005. The

author uses many comparisons of state policies in implementing entry regulation and travel restriction rules during the Covid-19 outbreak to see whether they are in accordance with the standard of proportionality.

F. Research Method

1. Type of Research

The authors employ normative research as their method. The premise of normative research is that a rule or standard that is deemed appropriate is what is written in a statutory regulation or law.⁵

The author of this study employs both the comparative approach and the legislative approach. The statute approach is applied by reading statutory laws and norms that are pertinent to the current legal disputes. The statute approach is a method of conducting research that emphasizes the importance of using laws and regulations as the primary source of information.⁶

The author will employ the statutory approach, drawing on the sources of international law outlined in Article 38, paragraph 1, of the statute of the International Court of Justice. Publications from the United Nations and decisions and resolutions from international conferences also provide support for this right.

⁵ Amiruddin and Zainal Asikin, 2014, *Pengantar Metode Penelitian Hukum*, Rajawali Pers, Jakarta, page 118.

⁶ Kadaruddin, 2021, *Penelitian Di Bidang Ilmu Hukum (Sebuah Pemahaman Awal)*, Formaci, Semarang, page 104

In the meantime, the comparative technique is used to compare the legal codes of one nation with those of other nations. The author will compare Indonesia's policies that limited the right to move through entry restrictions and travel restrictions during the Covid-19 outbreak with policies governed by international agreements by adopting a comparative method.

2. Type and Source

2.1. Type of Legal Material

The major and secondary legal materials that the author used in this proposal fall into these two categories. Peter Mahmud Marzuki defines primary legal material as legal documentation that is authoritative, or documentation that possesses authority. While fundamental legal material can be analyzed and understood with the aid of secondary legal material.

2.2. Source of Legal Material

The legal material that will be the source used by the author in this study is:

- a. International Conventions and other relevant legal instruments;
- b. Laws of the Republic Indonesia;
- c. Law books;
- d. Scientific journals as well as literature and other sources of information both in hard copy and soft copy obtained either directly or through internet search results that are relevant to the topic being researched.

3. Legal Material Collection Techniques

The technique of collecting legal materials carried out by the author is literature research. The author collected data carried out by studying and analyzing reading materials.

4. Legal Material Analysis Techniques

The legal material analysis technique that the author use is the descriptive method on the primary and secondary legal material obtained which is expected to fulfill the identification of legal facts which can be in the form of a situation, event or action, examining legal material related to legal facts, and application of the law.⁷

⁷ Muhaimin, 2020, *Metode Penelitian Hukum*, Mataram University Press, Mataram, page 70-71

CHAPTER II

LITERATURE REVIEW AND ANALYSIS OF THE FIRST RESEARCH QUESTION

A. Literature Review I

1. General Review of International Human Rights

1.1. Definition of Human Rights

In terminology, human rights are known by various terms, for example, *droit de l'homme* (French) and *menseljkereecten* or *grondrechten* (Dutch). In addition, several terminologies are usually used in the academic tradition regarding the designation of human rights. These terms include natural rights, fundamental rights, civil rights, natural rights, and others. These terms are substantially the same, and only the terminology is different. Several experts have provided definitions of human rights, including:

a. Universal Declaration of Human Rights:

*“Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent, and indivisible”*⁸

b. Soedjono Dirdjosisworo:

“Human rights are inherent in every human being from birth, cannot be limited, reduced or circumscribed by anyone,

⁸ Office of The United Nations High Commissioner for Human Rights. Accessed 14 November 2022. Available at <https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx> accessed 14 November 2022

because they are the values and human dignity of every individual.”⁹

c. Jan Martenson:

“Human rights could be generally defined as those rights which are inherent in our nature and without which we cannot live as human beings.”¹⁰

d. Legally, human rights are defined as follows in Article 1 paragraph 1 of Law No. 39 of 1999 respecting Human Rights:

“A set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law, government and everyone for the honour and protection of human dignity.”

According to John Locke, God the Creator personally grants human rights as inherent rights. Therefore, it cannot be removed by any force in the world. This is a natural right that cannot be separated from or intermingled with human existence and is very fundamental (fundamental) for life and human life.¹¹

In line with what was explained by Marthen Kriale, he argued that human right is a right that comes from God in practice.¹² Jack Donnaly said

⁹ Soedjono Dirdjosisworo, Paper: HAM, Demokrasi dan Tegaknya Hukum Dalam Konteks Ketahanan Nasional Indonesia, Paper on Upgrading and Workshop on Citizenship Lecturers in West Java Class XVI Academic Year 2003/2004, page 2

¹⁰ *Ibid.*

¹¹ Lahaling, H.,(et.al.), Children's Rights In The Context Of Child Marriage In Gorontalo Province, *SASI*, Vol. 28, No. 2, June 2022, page 235. See also; Prof. Aswanto. Lecture Materials for the Doctor of Law Program in PPS UNHAS see in Nurul Qamar, S. H., 2022, *Hak Asasi Manusia Dalam Negara Hukum Demokrasi: Human Rights In Democratiche Rechtsstaat*. Sinar Grafika, page 16

¹² *Ibid.*

that human rights are rights sourced from natural law, but the main source is God.¹³

Human rights are basic ideas about the treatment everyone is entitled to receive for being human. All people have the same rights and are free at birth. Humans must be treated with respect and on an equal footing because of this. There are distinctions between the ideas of human rights and fundamental rights, it should be recognized. According to D.F. Scheltens,¹⁴ human rights or *mensrechten* are rights that every human being has as a consequence of being born as a human being. Meanwhile, basic rights or *grondrechten* are rights obtained by every citizen as a citizen of a country.

Suppose human rights are rights that every human being obtains as a consequence of being born as a human being. In that case, this is different from basic rights, which every human being obtains as a citizen of a country. Referring to the source, human rights come from God, while basic rights come from the state or government. Human rights are universal, while basic rights are domestic.

Based on various definitions of human rights, it is determined that these rights are inherent in people and are essential and natural as a gift from God that must be recognized, safeguarded, and preserved by every individual, society, and nation.

¹³ *Ibid.*

¹⁴ Masyhur Effendi, 1994, *Dimensi dan Dinamika Hak Asasi Manusia dalam Hukum Nasional dan Internasional*, Ghalia Indonesia, Jakarta, page 2

1.2. Instruments of International Human Rights

The sources of international human rights, also referred to as IHRs, are generally similar to those of international law. According to J.G. Starke, determining the law that applies to a certain incident or circumstance allows for a general classification of international law into five categories, namely:¹⁵

- a. Custom;
- b. Treaty;
- c. Court decision or arbitration decision;
- d. Legal works;
- e. International organization decisions.

In the International Court of Justice Statute (hereinafter ICJ Statute) Article 38 paragraph 1, it is clearly stated that 4 forms of sources of international law are:¹⁶

- a. International conventions,
- b. international norms,
- c. general principles of law accepted by civilized nations,
- d. judicial rulings, and the teachings of the best publicists from the many countries are only a few examples.

¹⁵ J.G Starke, 2014, *Pengantar Hukum Internasional*, 10th edition, Translated by Bambang Iriana Djajatmaja, Sinar Grafika, Jakarta, page 42

¹⁶ Article 38 paragraph 1 of the Statute of International Court of Justice

However, some IHRs literature narrows down and provides an explicit description of IHRs sources specifically. The following will explain some of the most widely recognized human rights instruments by States:

1. Universal Declaration of Human Rights (UDHR)

The United Nations (UN) was successful in defining what constitutes a human right through the adoption of the Universal Declaration of Human Rights (UDHR) in 1948. The United Nations General Assembly met in Paris on December 10, 1948, and approved this resolution. The UDHR, which was established by UN Resolution No. 217 (III) in 1948, was the first formal statement of human rights that was endorsed by all countries.¹⁷

The UDHR, due to its universal nature, has become the basic reference for human rights documents. The UDHR is one of the elements in the International Bill of Human Rights, namely a legally binding tabulation of rights.¹⁸ As a result, even though this human rights instrument is only in the form of a declaration, it already has validity and is binding on countries based on customary international law.

The 30 articles that make up this declaration urge everyone to make sure that the freedoms and rights described in the declaration are really acknowledged and upheld. According to Articles 1 and 2 of the Universal Declaration of Human Rights, everyone has the right to the freedoms and rights outlined in the text, regardless of their race, nationality, gender,

¹⁷ United Nations of Human Rights. Accessed 14 November 2022. Available at: <http://www.ohchr.org/EN/UDHR/Pages/UDHRIndex.aspx>

¹⁸ Rhona K.M.Smith (et. al), 2008, *Hukum Hak Asasi Manusia*, PUSHAM UII, Yogyakarta, page 88

language, religion, or political affiliation. In the UDHR, civil and political rights are included in Articles 3 through 21, while economic, social, and cultural rights are covered in Articles 22 through 27.

2. International Covenant on Civil and Political Rights (ICCPR)

Based on UN Resolution No. 2200A (XXI) of 1966, the ICCPR was approved by the UN general assembly on December 16 and went into effect on March 23. By January 2023, 173 countries had signed on to the Covenant. The Universal Declaration of Human Rights' enumeration of civil and political rights and freedoms is expanded upon in the Covenant.

Human rights such as the right to life and human dignity, equality before the law, freedom of speech and assembly, freedom of assembly and association, freedom of religion, freedom from torture and ill-treatment, freedom from arbitrary detention, gender equality, the right to a fair trial, the right to a healthy family life and an intact family, and minority rights must be protected in all countries that have ratified the ICCPR.

An afterthought to this agreement was the formation of a Human Rights Committee. This Committee's job is to examine reports from States Parties on the steps they took to put the current Covenant's provisions into practice. People who claim their human rights under the Covenant have been violated can also report those incidents to the Committee.¹⁹

¹⁹ Boer Mauna, 2013, *Hukum Internasional: Pengertian, Peranan, dan Fungsi dalam Era Dinamika Global*, Alumni, Jakarta, page 682

The ICCPR divides rights into two categories: non-derogable rights and derogable rights. Non-derogable rights are unalterable rights that state parties may not restrict, not even in an emergency. The second classification is derogable rights, which can be reduced or restricted by state parties.

3. International Covenant on Economic, Social, and Cultural Rights (ICESCR)

The UN General Assembly adopted the ICESCR on December 16, 1966, based on Resolution No. 2200A (XXI), and it entered into force on January 3, 1976, simultaneously with the ICCPR. Economic, social, and cultural rights, such as the right to work under favourable conditions, the right to social protection, the right to an adequate standard of living, the right to the highest attainable level of physical and mental health, the right to education, and the right to benefit from scientific progress and cultural freedom, are all guaranteed by the ICESCR.

In addition, as a result of this covenant, the Committee on Economic, Social, and Cultural Rights was established in 1985. It is composed of 18 impartial specialists in human rights and individual capacities. This Committee is tasked with studying reports from States parties, discussing them with the relevant government representatives, and then formulating recommendations for the UN Economic and Social Council based on those conversations.

Thus the chronological time instrument IHRs can be simplified as follows:

Table 2. 1 Chronological Time of Bill of Rights

Bill of Rights	Date Accepted and Entry into force	Additional Rules
UDHR	10 December 1948	-
ICCPR	Accepted 16 December 1966, entered into force 23 March 1976	1. First Optional Protocol entered into force 23 March 1976 2. Second Optional Protocol entered into force 11 July 1991
ICESCR	Accepted 16 December 1966, entered into force 3 January 1976	Optional Protocol entered into force 5 May 2013

1.3. Principles of International Human Rights

A number of human rights concepts are included in numerous human rights documents and are also applied to more expansive rights.

a. Universality

The Oxford Dictionary defines universal as being of, belonging to, or done by all people or things on earth or in the relevant class, and applicable in all circumstances. In this context, universality refers to the range of human rights' application. The universal principle is a fundamental principle that establishes that every human being's nature and existence as a creation of God Almighty is connected to the existence of human rights. Civilized nations acknowledge the truth as universal principles of law,

irrespective of race, skin color, gender, language, religion or belief, political opinion, nationality, and ethnicity.²⁰

Human rights are universal, which means that everyone in the world has a right to them. In this context, universality refers to the extent to which human rights may be applied, combining the broadest possible *ratione personae* and *ratione loci*. In a strict sense, the geographic reference is redundant because the fact that human rights apply to everyone, without exception, implies that they do so wherever that person may be.²¹

It appears that widespread applicability *ratione personae* was not always understood to mean applicability *ratione loci* everywhere in the world. Article 2 of the UDHR states that no one shall be treated differently because of their nationality, citizenship, or residence in a country or territory that is independent, trust, non-self-governing, or subject to any other limitation of sovereignty.²²

b. Inalienability

Webster defines alienable as transferable to another person's ownership. Furthermore, an unalienable right is one that its holder is never permitted to give up or transfer.

A fundamental principle known as inalienability holds that human rights are unalienable and unquestionable gifts from God Almighty that are

²⁰ Jack Donnelly, 1989, *Universal Human Rights in Theory and Practice*, Cornell University Press, Ithaca, page 1. See also; Widiada Gunakaya, 2017, *Hukum Hak Asasi Manusia*. Penerbit Andi, Yogyakarta, page 66

²¹ Brems, E., 2001, *Human rights: Universality and diversity* (Vol. 66). Martinus Nijhoff Publishers, page 4

²² Article 2 of UDHR

inherent in human nature and existence as His creations. Thus, the principle of attachment lowers the principle that cannot be revoked and principle that cannot be ignored (interrogable principle).²³

The rights to life, liberty, and the pursuit of happiness, according to Thomas Jefferson, are unalienable. The rights to life and liberty, according to John Locke, are unalienable yet subject to forfeiture by those who possess them. Because they aren't really theirs to transfer, according to Locke, people aren't allowed to transfer their rights to life and liberty. In his statement, Locke clarifies this concept:²⁴

“For Men being all the Workmanship of one Omnipotent, and infinitely wise Maker; All the Servants of one Sovereign Master, sent into the World by his order and about his business, they are his Property, whose Workmanship they are, made to last during his, not one another Pleasure.”

Locke concluded that since everyone is born with certain unalienable natural rights, they are all equal. That is, rights that were bestowed by God and are inalienable.

c. Indivisibility, Interdependence and Interrelatedness

The ICCPR and the ICESCR are the two principal Covenants that resulted from the creation of the UDHR. The first one consists of a set of rights that support people's right to privacy as well as procedural protections for their access to justice and right to vote. Human rights must be viewed

²³ McConnell, “The nature and basis of inalienable rights”, *Law and Philosophy*, Vol. 3, No.1, 1984, page 63

²⁴ John Locke, 1965, *The Second Treatise of Government in Two Treatises of Government*, ed. Peter Laslett, Mentor Book, New York, page 311

as a system where all rights are linked, interrelated, and indivisible despite having two covenants.²⁵

Indivisibility is a phrase used to describe how the main types of rights are essentially complementary to one another. Since the term "indivisible" was first used in relation to human rights in 1950, its meaning and relevance have changed. The UDHR was being rewritten into a legally binding treaty, and the UNGA's Third Committee was discussing how to do so.²⁶

Indivisibility is understood to mean that all human rights are equally significant; as a result, it is not permitted to omit particular rights or groups of rights from being included in their component parts. Indivisibility is explained from this perspective in the following fifth paragraph of the Vienna Declaration and Programme of Action (hereafter Vienna Declaration), which was produced during the Vienna World Conference on Human Rights in 1993 and endorsed unanimously by the 171 nations present:

“All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”²⁷

²⁵ Neves-Silva, P., Martins, G. I., and Heller, L., Human rights' interdependence and indivisibility: A glance over the human rights to water and sanitation. *BMC International Health and Human Rights*, Vol. 19, No. 1, 2019, page 7

²⁶ UNGA Resolution 217 A (III) (adopted 10 December 1948)

²⁷ 15 of Vienna Declaration and Programme of Action (Vienna Declaration)

The Vienna Declaration, in particular, states that all human rights are unalienable. However, some academics have generally restricted the use of indivisibility to the three generations of rights, international recognition of those rights, and IHRs instruments. The Vienna Declaration thus makes reference to vulnerable groups that are safeguarded by international law, such as indigenous, disabled, women's, and children's rights.²⁸

Czech lawyer Karel Vasak first proposed the three-generation divide of human rights in 1979. The three human rights generations include:

Table 2. 2 Generations of Human Rights

	Period of time	Scope
First Generation	1789-1791	Civil-political rights
Second Generation	After World War II	Socio-economic rights
Third Generation	1972-1992	Collective-developmental rights

The main UNGA resolutions reiterated the idea of the interdependence of human rights in the Vienna Declaration that followed. Interdependence was defined as follows in the Tehran Proclamation, which was released in 1968 during the first World Conference on Human Rights:

“Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. The achievement of lasting progress in the implementation of human rights is dependent upon sound and

²⁸ Vienna Declaration, *loc. cit.*, See also: Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995.

effective national and international policies of economic and social development."²⁹

Since indivisibility presupposes a much stronger form of interdependence, James W. Nickel maintains that indivisibility and interdependence are not the same thing. Interdependence is understood to exist when one right is contingent on the protection of another right without any expectation of reciprocity.³⁰

The concept of interdependence is essential to understanding how the two categories of rights (CPR and ECSR) should be interpreted and applied. It also serves as a dynamic guideline for how to interpret and implement human rights, allowing different rights' norms and contents to inform, support, and develop alongside one another in response to claims about human rights that are based on actual human experience.³¹

For instance, the implementation of interdependence principle can be seen in categorization of basic rights. *First, security rights are those civil rights that shield a person from being tortured, raped, assaulted, or killed. And secondly, rights to basic necessities including water, food, clothing, housing, and health care would be considered subsistence rights. Therefore, when considered collectively, these rights would be mutually*

²⁹ Proclamation of Tehran, Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, UN Doc A/CONF 32/41 (Proclamation of Teheran) 3 para. 13

³⁰ Neves-Silva, P., Martins, G. I., & Heller, L., *Op.cit.*, page 5

³¹ Bruce Porter, 2020, *Research Handbook on Economic, Social and Cultural Rights as Human Rights* Chapter 15: Interdependence of human rights Cheltenham, Edward Elgar Publishing, United Kingdom.

*necessary and equally essential for the protection of other rights. All other non-basic rights would therefore be dependent on these rights.*³²

Although the terms "interdependent" and "interrelated" acknowledge separateness, they also indicate bringing two or more entities together in mutual concord. One right will always be tied to another according to the interrelatedness concept. The protection and realization of all human rights, including the right to life and the freedom of expression, as well as the right to follow one's own faith and beliefs, depends on these and other rights. In other words, a chain of connections runs through all human rights.

d. Equality and non-discrimination

The definitions of the term "equality" include "the same as," "equivalent," "matching," and "identical." When applied to the concept of human rights, the term "equality" suggests that despite our differences, we are all of equal worth. The principle of equality requires uniform application of rules when dealing with similar situations.

By first taking into account what discrimination means, the phrase "non-discrimination" signifies. To discriminate is to separate, differentiate, or treat someone in a different way. It has neither a positive nor a negative connotation. Therefore, in general, the non-discrimination principle establishes that each and every human being is the same as an unequally created creature by God Almighty.

³² *Ibid.*

The exercise of fundamental rights and freedoms is conditional upon equality and the elimination of discrimination. One of the most important clauses in the UDHR is the principle of non-discrimination, which serves as both a substantive right and a guiding principle for the interpretation of all other human rights in the document. In accordance with UDHR Article 2,

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”

It and equality were linked during a large portion of the UDHR writing process as they were two sides of the same coin. Eventually, equality and non-discrimination were separated, and Article 2 of the UDHR, which is specific to UDHR rights, became the vehicle for this separation. In accordance with Article 7 of the UDHR, which states the following:

“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”

The principle of equality is known as affirmative action (positive discrimination). It occurs when someone from a different position is treated

the same.³³ If this equal treatment continues, this difference will continue even though human rights standards have been raised.³⁴

In case all people are considered equal, there should be no discriminatory treatment, only affirmative action to achieve equality. Discrimination is a gap in treatment differences from treatment that should be the same or equivalent.³⁵

2. General Review of International Covenant on Civil and Political Rights (ICCPR)

2.1. Development of ICCPR

The main civil and political rights outlined in the Universal Declaration of Human Rights are strengthened by the International Covenant on Civil and Political Rights (ICCPR), which also elaborates other related issues, in order to make them legally binding provisions. The Covenant is made up of a prologue and 53 Articles covering 6 Chapters. The Cold War forces of the Capitalist Block countries and the Socialist Block countries came to a difficult political agreement that led to the creation of the ICCPR.³⁶

The ICCPR was approved by the UN General Assembly in 1966, and after receiving 35 ratifications, it entered into force in 1976. There were 114

³³ Jauhariah, 2016, *Dinamika Hukum & HAM*, Penerbit Cintya Press, Jakarta, page 79-80.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ Adnan Buyung Nasution and A. Patra M. Zen, 2006, *Instrumen Internasional Pokok Hak Asasi Manusia*, Yayasan Obor Indonesia Yayasan Lembaga Bantuan Hukum Indonesia, Jakarta, page 23.

First Optional Protocol parties as of January 2023, 114 Second Optional Protocol parties, and 173 States Parties to the ICCPR.³⁷

Table 2. 3 Number of States Ratify ICCPR

Region	Number of States that Ratify ICCPR
Asia	40
Europe	43
America	32
Africa	49
Australia/Oceania	9

The number of states that have signed on to the ICCPR and the First Optional Protocol has skyrocketed since the end of the Cold War, when human rights became less of a partisan issue at the United Nations. As an illustration, the United States ratified the ICCPR in 1992 despite being a prominent long-term absentee from the international human rights system. For the Russian Federation, the First Optional Protocol became effective in the same year.

There is a distinction between non-derogable rights and delayed rights in terms of civil and political rights. Rights that cannot be suspended include the right to life, the right to freedom from torture and enslavement, the right to freedom of religion and political association, the right to equal protection under the law, the right not to be imprisoned for contract

³⁷ United National Treaties Database, <<http://untreaty.un.org>>

violations, and the right not to be found guilty based on evidence that can be overturned on appeal.³⁸

Meanwhile, the second classification is derogable rights, namely rights whose fulfilment may be reduced or limited by state parties. This includes the right to associate, the right to move and determine domicile, and the right to freedom of expression.³⁹ Countries party to the ICCPR can reduce or make deviations from their obligations to fulfil these rights. Still, these deviations can only be made if they are proportionate to threats that disturb national security or an emergency they are facing and are not discriminatory against race and ethnicity.

The state has limits regarding implementing the two categories of rights, both non-derogable and derogable. This regulates at what limits the state does not intervene and at what limits intervention must be carried out. The state may not intervene to respect everyone's rights, especially rights that cannot be suspended. Because state interference results in violations of the rights of individuals or groups.⁴⁰

2.2. Ratification of ICCPR in Indonesia

The ICCPR is an international agreement whose text was produced by the United Nations in 1966. The ICCPR is only binding on the states that

³⁸ Komnas HAM, Komentar Umum Kovenan Internasional Hak Sipil dan Politik dan Kovenan Internasional Hak Ekonomi Sosial dan Budaya [https://www.komnasham.go.id/files/1480577941-komentar-umum-kovenan-hak-sipil-\\$XHHPA.pdf](https://www.komnasham.go.id/files/1480577941-komentar-umum-kovenan-hak-sipil-$XHHPA.pdf)

³⁹ Article 12, 19, and 21 of the ICCPR

⁴⁰ Komnas HAM, *op. cit.*

have ratified it. On October 28, 2005, the Indonesian government ratified the International Covenant on Civil and Political Rights (ICCPR), making it Undang-Undang Nomor 12 Tahun 2005. This demonstrates how Indonesia is bound by a number of international responsibilities under the ICCPR. Indonesia should uphold, respect, and preserve all human rights within its borders as a member state.

The Indonesian state has legally committed itself as a result of this ratification, which has implications for the implementation of human rights. The government has fulfilled its duty to incorporate this ratified agreement into law by doing a number of things, including drafting and passing legislation. The second is that, in order to respect, preserve, and uphold human rights, the government is obligated to implement a number of measures and regulations.

The International Bill of Human Rights, also known as the International Law on Human Rights or the International Bill of Human Rights, was previously rejected by Indonesia. Despite the fact that the declaration is a non-juridical document, all United Nations members, including Indonesia, are required to recognize and adopt its main ideas. The passage of Undang-Undang Nomor 39 Tahun 1999 concerning Human Rights took into account the Universal Declaration of Human Rights in the Indonesian context.⁴¹

⁴¹ Kementrian Luar Negeri Republik Indonesia, (2019, March), Indonesia dan Hak Asasi Manusia, Accessed 23 January 2023. Available at: https://kemlu.go.id/portal/id/read/40/halaman_list_lainnya/indonesia-dan-hak-asasi-manusia

There should be no longer an excuse for Indonesia not to defend the human rights of its citizens given the existence of Human Rights Law and Ratification of the International Covenant on Civil and Political Rights. This is because in simple terms, Indonesia already has regulations and courts to resolve human rights violations.

2.3. Freedom of Movement

The ability to travel, study, and work anywhere in the European Union (EU) continues to be the most important aspect of the EU that its citizens associate with it. The free movement of people, products, and services inside the EU is seen by its citizens as one of the EU's most favorable qualities.⁴²

The right to move and live anywhere in the European Union is fundamental to the concept of EU citizenship, which was established by the Treaty of Maastricht in 1992. Following the gradual elimination of internal borders under the Schengen agreements, Directive 2004/38/EC was enacted to ensure the free movement and residence of EU citizens and their families within the EU.

Article 3 of the Treaty on European Union (hereafter TEU) guarantees the right to enter and travel freely within the territory of another Member State, as well as the right to remain there to work and live (subject to certain conditions) after having worked there.

⁴² Standard Eurobarometer 84, Public Opinion in the European Union, Autumn 2015, November 2015, p.94

Subsidiarity and proportionality rules explicitly govern how EU powers are used. These principles are essential to the way the EU operates.

One of the first 'victims' of the coronavirus pandemic was freedom of travel. Due to the unusual nature of the health crisis, Member States took unilateral action and passed a variety of laws that, among other things, prohibited cross-border and internal travel. It leaves internal border checks up to the Member States' discretion. An internal border where checks have been reinstated should not be "equated with an external border," the European Court of Justice (ECJ) has previously ruled. It has been strongly criticized that some Member States' imposition of blanket entry bans on foreign nationals has an ambiguous legal foundation and sets a hazardous precedent.⁴³

Freedom to move is a condition that cannot be separated from personal development. The Covenant's other rights are tied to freedom of movement, as the Committee frequently observes when it considers communications from individuals and reports from States parties.

Three aspects of freedom of movement are governed by the ICCPR. First, the first sentence of Article 12 relates to the right to move and to reside anywhere one pleases. A State's whole territory, including all portions of federal States, is covered by the right to unrestricted

⁴³ E. Maurice, T. Besnier and M. Lazarovici, Restoring free movement in the Union, Foundation Robert Schuman, European issues, No 562, June 2020.

movement. The ability to exercise this right may not be conditioned on a person's having a specific reason for moving to or settling in a certain location. Any limitations must abide by paragraph 3.⁴⁴

See also paragraph 2 of Article 12 for details on the right to leave any country, including one's own. It is not permissible to condition a person's right to leave a state's territory on the reason they are leaving or the length of time they will be gone. Thus, both temporary overseas relocation and permanent departure are accommodated. The legal protection extends to the individual's freedom of destination state. An immigrant who is being forcibly ejected from a State also has the right to choose the destination State, with the consent of that State, because the protections of Article 12, paragraph 2, are not limited to those who are lawfully present on the territory of that State.⁴⁵

Thirdly, The unique circumstances under which rights based on paragraphs 1 and 2 can be limited are governed by Article 12 paragraph 3. According to this clause, states are allowed to restrict certain liberties in order to preserve the nation's security, public peace, morals, and other people's rights and freedoms.⁴⁶

Article 12 paragraph 3 explicitly states that it is necessary for the limits to protect such reasons in addition to being used for legal ones. The proportionality principle must be followed while implementing restrictive

⁴⁴ General comment No. 15, para. 8, in HRI/GEN/1/Rev.3, 15 August 1997, p. 20

⁴⁵ *Ibid.*, para. 9

⁴⁶ General Comment No. 27, *Op.cit.*, para. 11

measures. In addition to the law that establishes the framework for restrictions, the administrative and judicial bodies charged with carrying out the law must adhere to the principle of proportionality. States are required to make sure that any proceedings involving the use or restriction of those rights are quick and that the justifications for their use are disclosed.⁴⁷

2.4. Principle of Proportionality

In emphasizing that measures adopted in response to a derogation must be taken to the extent that is strictly required given the exigencies of the context, the derogation articles of the ICCPR contain the principle of proportionality. In particular, Article 4 of the ICCPR states:

“During a state of emergency that threatens the survival of the nation and is officially declared, member nations may apply measures to limit the rights set forth in this Convention, insofar as they arise due to the urgent need of the situation, provided that such measures are not inconsistent with other national obligations under international law and does not contain any discrimination on the basis of race, gender, language, religion or social origin”

According to this article, a state party may unilaterally derogate temporarily from some of its ICCPR responsibilities. However, Article 4 of the ICCPR establishes a special system of protections for both this specific level of derogation and its tangible effects.

A restriction must be reasonable and not cause injury to the owners of the property in question. A restriction must be reasonable for it to fulfill its

⁴⁷ *Ibid.*, para. 15

protective purpose. It must be the least intrusive tool available to fulfill the protective function, and it must be appropriate for the interest that is being safeguarded.⁴⁸

This requirement of proportionality elevates the standard of absolute need above the state's subjective deviance under a rigid standard. Any infringement of the principle renders the relevant measure void, but has no bearing on the deviation that led to its adoption.⁴⁹

3. Coronavirus Outbreak

In various places, the Corona Virus (Covid-19) outbreak first appeared in 2019. Wuhan City, a city of 11 million people that serves as the political, social, and cultural capital of central China, reported a cluster of pneumonia cases to the World Health Organization (WHO) on December 31, 2019.⁵⁰ The origin of this disease is the occurrence of cases of pneumonia of unknown cause in Wuhan China that occurred in traders at the Huanan fish market, which also sells livestock and wild animals. Pneumonia, also known as pneumonia, is an infection that causes inflammation of the air sacs in one or both lungs.⁵¹

Covid-19 refers to the virus that causes SARS-CoV-2. The vast majority of people infected with the virus will develop a respiratory illness of

⁴⁸ General Comment No. 34, para. 22.

⁴⁹ JM Lehmann, Limits to counter-terrorism: comparing derogation from the International Covenant on Civil and Political Rights and the European Convention on Human Rights. *Essex Human Rights Review*, Vol.8, No.1, 2011, page 114

⁵⁰ Chaplin, S., 2020, COVID-19: a brief history and treatments in development. *Prescriber*, 31: 23-28, <https://doi.org/10.1002/psb.1843>

⁵¹ Sahin A.R., (et.al), 2019 Novel Coronavirus (COVID-19) Outbreak: A Review of the Current Literature, *EJMO*, Vol. 4, No.1, 2020, pp. 1–7

varying severity and recover without any special treatment. However, even healthy people can get seriously ill and require medical attention. Those at a higher risk of contracting a life-threatening illness are the elderly and those who already have a preexisting condition like cancer, diabetes, cardiovascular disease, or a persistent respiratory ailment. Anyone of any age is vulnerable to getting sick, becoming critically ill, or dying from Covid-19.⁵²

The WHO has declared Covid-19 a global pandemic due to the rapid and massive spread of the virus on March 11, 2020.⁵³ To reduce the spread of this pandemic, all countries are taking various policy measures such as imposing international travel restrictions, banning all foreign visitors and restricting travel from places with confirmed cases.

However, the country's economy is getting weaker while the Covid-19 pandemic is still going on for a long time. Communities whose livelihoods depend on tourism, such as the creative economy, local transportation, and the provision of accommodation. Current international travel restrictions cannot be a permanent solution. In addition, it is also known that travel bubble is increasingly in demand by several countries to restart cross-border travel amid the Covid-19 pandemic.

⁵² World Health Organizations, Coronavirus disease https://www.who.int/health-topics/coronavirus#tab=tab_1

⁵³ Edward Livingston, Karen Bucher, dan Andrew Rekitto, Coronavirus Disease 2019 and Influenza 2019-2020, JAMA - Journal of the American Medical Association, Vol. 323, No. 12, 2020, page 1122.

The idea of the travel bubble was developed in reaction to limitations placed on international travel during a pandemic. In reality, a travel bubble will only permit a certain amount of movement between nations that concur. This policy is an alternative for countries in the world because the travel bubble is considered a solution for inter-regional travel, and the pandemic is expected to last a long time.

4. Entry Regulation and Travel Restriction During Covid-19

Outbreak

4.1.State Sovereignty and State Responsibility

A civil body called the state was created to control communal life. A governance order is set up as a way of carrying out state obligations, as well as the division of duties and power restrictions, to achieve the goal of such communal existence. because the state has the power to control national life. Authority is the power to bring about legal consequences that is conferred by laws and regulations. According to H.D. Stoud, legal authority encompasses the full range of powers enjoyed by public law subjects in the course of legal business. This means that authority may be explained as the entirety of norms connected to the acquisition and use of governmental authority by public legal subjects.

During the Covid-19 pandemic, many countries have taken measures to protect their citizens, including closing their borders and implementing quarantine measures. These actions have challenged

traditional notions of state sovereignty as they limit the movement and freedom of individuals, including citizens of other countries.⁵⁴

The pandemic has also highlighted the importance of global cooperation and solidarity in addressing a global health crisis, while still maintaining national autonomy. This has led to some tension between national sovereignty and international cooperation as countries may be hesitant to relinquish control over their own response to the virus.⁵⁵

State responsibility was established under the guiding principles of equality and state sovereignty. There are two terms recognized in international law that refer to liability and responsibility. The terms of “liability” relates to the issue of compensation for another party's loss or the restoration of damage. While the “responsibility” refers to the legal liability for a legal requirement. The state responsibility often refers to a nation-state's duty to defend and advance its citizens' human rights as well as to work with other nations to do the same on a global scale.

This has included implementing public health measures such as lockdowns and social distancing requirements, while also ensuring access to medical care and other basic needs. States have also had a responsibility to cooperate with each other in sharing information and resources to address the global pandemic.⁵⁶

⁵⁴ Krasner, S. D., 1999, *Sovereignty: Organized hypocrisy*. Princeton University Press

⁵⁵ Ratti, R, COVID-19 and the sovereignty of states. *Global Health Governance*, Vol. 14, No., 1, 2021, page 1-7,

⁵⁶ United Nations, Human rights and COVID-19, accessed 28 April 2023. Available at: <https://www.ohchr.org/en/issues/health/pages/humanrightsandcovid19.aspx>

4.2. Legal Instrument

As a result of the Covid-19 pandemic, states have essentially resorted to immigration restrictions and border barriers. Governments from all over the world employ various containment techniques in an effort to lessen the effects of the introduction of a new contagious ailment. The most popular non-pharmaceutical treatments are the ones that restrict travel and need an admission permit.

Travel restrictions, according to WHO, are acceptable in the early stages of an outbreak because they provide governments time to better plan efficient countermeasures. Meanwhile, the goal of entry regulation is prevention of imported infection and protection of domestic people from infection. Human rights were safeguarded during a pandemic by international human rights laws.

The International Covenant on Civil and Political Rights (ICCPR) requires that governments take measures to eliminate threats to public health and provide medical assistance to those in need in accordance with Article 4, paragraph (1). Although states must uphold human rights, they do have the discretion to limit them under certain conditions.

The ICCPR's Article 12 paragraph 4 outlines the circumstances under which freedom of movement may be legally restricted. These restrictions must be legal, necessary to safeguard the rights of others, public safety, health, morals, or other considerations, and consistent with other

ICCPR rights. Lawfully enacted restrictions must adhere to established standards and cannot provide their implementers unrestricted power.⁵⁷

The fact that there are signs prohibiting restrictions on the right to move does not mean that these restrictions are unavoidable, as Article 43 of the International Human Rights Convention from 2005 permits WHO member countries to impose travel restrictions in order to contain the spread of a disease through additional casuistry policies (additional measures). This indicates that, in accordance with Article 43 of the IHR 2005, governments may impose restrictions on the entry of foreign nationals. So that restrictions on the right to move can be implemented as an additional policy and must meet the parameters set by WHO.

4.3. Policies for Asylum Seekers

By limiting the mobility of refugees and asylum seekers, the Covid-19 epidemic has also had a substantial impact on the international protection regime.⁵⁸ These restrictions can create significant barriers for asylum seekers who may already be in vulnerable situations.

Until 20 May 2022, at least 20 nations worldwide will not grant asylum to individuals who are escaping conflict, violence, or persecution due to public health concerns. Some of these nations arbitrarily or inconsistently

⁵⁷ General Comment No. 27, *Op.cit.*, para. 13

⁵⁸ United Nations High Commissioner for Refugees (UNHCR), Temporary Measures and Impact on Protection, Accessed 28 April 2023. Available at: https://im.unhcr.org/covid19_platform/

apply exceptions for the entry of asylum applicants.⁵⁹ For example, mandatory quarantine requirements can make it difficult for asylum seekers to access services, find employment, or even maintain a safe and stable living situation. Additionally, delays in the processing of asylum claims can prolong the uncertainty and instability that asylum seekers often experience.

The UNHCR has repeatedly warned that preventing asylum seekers from entering at borders is illegal and unnecessary to address public health issues. The UN High Commissioner for Refugees (UNHCR) worked with states throughout the pandemic, pushed them to uphold their legal duties under international law to asylum seekers, and provided guidance and technical advice on how to guarantee refugee rights while also preserving public health.⁶⁰

There are several receiving countries that apply temporary rules not to accept refugees and even provide opportunities for refugees to be returned from countries. This was due to the worsening situation in the midst of the COVID-19 pandemic outbreak in Europe.⁶¹ However, global refugees also have the right to receive assistance for daily needs, including full access to healthcare. As a result, refugees are vulnerable to the Corona virus and seek threats in order to safeguard their rights under UNHCR

⁵⁹ UNHCR, Accessed 28 April 2023. Available at: <https://www.unhcr.org/news/press/2022/5/6287a0634/un-high-commissioner-refugees-calls-states-lift-remaining-pandemic-related.html>

⁶⁰ *Ibid.*

⁶¹ Iin Karita Sakharina, "Perlindungan Negara Bagi Pengungsi Pada Masa Pandemi Global COVID-19 Kajian Hukum Internasional" *Al-Azhar Islamic Law Review*, Vol.2, No. 2, 2020, page 74

controls in the receiving state, as opposed to the transit state, which joins to ratify the 1951 Refugee Convention in accordance with humanity's inability to distinguish between groups based on status, religion, or other factors.⁶²

It is important for countries to balance the need to protect public health during the Covid-19 pandemic with the human rights and needs of asylum seekers. Governments and international organizations have a responsibility to ensure that asylum seekers are able to access the protection they need, even during these challenging times.

B. Analysis I

1. Analysis Freedom of Movement in the application of Entry

Regulation and Travel Restriction and State Practices

By being articulated as a right to freedom of movement, international mobility is safeguarded by human rights legislation with far greater rigor and specificity. The idea of personal autonomy is connected to this right. International law theorists have long argued that there is a *jus intergens*, or human right to travel, based on natural law.

The right to travel freely is recognized in a wide variety of international and regional treaties protecting human rights. Article 12(1) of the ICCPR deals with freedom of movement and the ability to choose where to reside within a country, while Articles 12(2) and (4) deal with the right to

⁶² *Ibid.*, page 76

leave any nation and the right to enter one's own country, respectively. Article 12 of the ICCPR makes direct reference to and closely mirrors the language of Article 13 of the Universal Declaration.

When it stipulates that the aforementioned rights shall not be subject to any restrictions other than those that are granted by law, the ICCPR invokes the concept of legality. Article 12(3) of the ICCPR lists the conditions that apply to the rights in Articles 12(1) and (2). A person's freedom of movement under Article 12(1) (if they are present in a nation legitimately) or their freedom to leave any country, as defined by Article 12(2), may be limited under Article 12(3) of the ICCPR.

According to Article 12(3), it must be shown why various types of aliens should be treated differently when it comes to the limitations on those rights. However, it should be understood that the mere generality of these heads of restriction may serve to encourage restrictions on freedom of movement. As a result, in the event that any of them are adopted by a legislature, their application should be narrowly construed in order to remove any potential ambiguities in favor of freedom of movement.

Article 4 of the ICCPR provides in General Comment No. 29 that nations that impose limits shall make reference to and abide with their respective domestic legislation. Regarding state practice, there is

widespread agreement that appears to recognize the following constraints as fair restrictions.⁶³

1. State security;
2. Public order, health, morals, or safety;
3. Effective public service delivery and upkeep of community-required supplies;
4. Protection of any specific interest deemed significant by the State.

Derogation is permitted from Article 12 in time of public emergency, and States have taken advantage of the derogation procedure in Article 4. Emilie Hafner-Burton defines derogation as a rational action taken in the face of uncertainty, which allows the Government to gain time and breathing space by using law to regulate society and combat crises by temporarily limiting civil and political liberties.⁶⁴

Measures that deviate from the Covenant's rules must be extraordinary and short-lived. Two essential requirements must be satisfied before a State can attempt to apply Article 4 of the ICCPR: the situation must constitute a public emergency that endangers the survival of the country, and the State party must have formally declared a state of emergency.⁶⁵

The UDHR and the ICCPR's provisions, which extend this freedom to all people living lawfully on a state's territory regardless of their

⁶³ General Comment No. 29: States of Emergency (Article 4), 31/08/2001, UN-Doc CCPR/C/21/Rev.1/Add.11, para. 5

⁶⁴ Audrey Lebet, COVID-19 pandemic and derogation to human rights, Journal of Law and the Biosciences, Vol. 7, No. 1, 2020, page 1–15,

⁶⁵ *Ibid.*, para. 2

citizenship, can also be used to argue that restrictions placed solely on the basis of nationality, race, religion, or political beliefs would be unreasonable.

The following rulings have only been mentioned because they apply to multiple states, therefore they could be seen as examples of restrictions on freedom of movement. In the context of national security and public order are often considered together in the Committee's merits assessments. It was implied that the Committee in *Salah Karker v. France*⁶⁶ accepted the limits on the freedom of movement of someone associated with an Islamic movement that encouraged violent action as required for reasons of national security. He was recognised as a political refugee shortly after arrival in France but some years later, under suspicion that he actively supported a terrorist movement, the competent minister ordered his expulsion as a matter of urgency. The order was not enforced and instead he was subject to compulsory residence orders, limiting his movement to a comparatively wide area. The appeal decision upheld earlier orders based on public security, in the light of the situation in France, given the information available to the authorities about his close links with an organisation with violent methods.⁶⁷

Restrictions on access to sites which have been affected by environmental contamination could be supportable on the basis of public health grounds, as could restrictions imposed when quarantining against

⁶⁶ *Karker v. France*, CCPR/C/70/D/833/1998, 26 October 2000

⁶⁷ Taylor P., 2020, *Article 12: "freedom of movement of the person. A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights*, page 431"

the spread of disease. In *Minister of the Interior v. Madame Vicini*,⁶⁸ According to the French Conseil d'Etat, Article 107 of the Code de l'Administration communale requires each administrator to take all necessary steps within his administrative domain to maintain public health, security, and peace. In order to prevent any threat to the public's health, security, or peace, France regulates nomads' travel and lodging.

In order to stop the spread of the virus, countries have set entrance requirements and travel restrictions, which has had a severe impact on the right to free movement. While states have the authority to regulate entry and exit from their territories, these restrictions can limit individuals' freedom of movement. The transmission of the virus and the chance of it doing so more widely are both thought to be prevented by this policy. On the other hand, this approach has had terrible effects on things like employment, livelihoods, and access to services like health, food, water, and education.

Some have argued that these restrictions can be overly broad or discriminatory, particularly against certain groups, such as migrants or refugees. It is important for states to balance their responsibility to protect public health with their obligations to respect human rights and non-discrimination.

Many countries have implemented policies to prevent spreadness of Covid-19. The nature of restriction measures has been similar, but the levels

⁶⁸ Digest of Judicial Decisions on the Rule of Law, *Jóurnal of the I.C .J.* Vol. VII, No. 1 (Summer 1966), page 142-3

of strictness have varied. The novelty in this paper is to examine arrangements regarding travel restrictions and entry restrictions from the perspective of international law vis a vis the domestic law of several countries in statutory arrangements. Thus, the following is the example of countries that applied entry regulation and travel restrictions in the early Covid-19:

a. Indonesia

The Covid-19 virus pandemic, which has affected the entire world, had an influence on Indonesia. As part of its emergency constitutional legal measures to address urgent and dangerous conditions, Indonesia has also imposed restrictions on human rights, including the ability to move. There is a constitutional foundation for restrictions on travel bans in Indonesia. The 1945 Constitution of the Republic of Indonesia was amended in several places, including Article 28 A, which guarantees the right to life, Article 28 E, paragraph (1), which guarantees the freedom of movement anywhere in the world, and Article 28 H, paragraph (1), which guarantees the right to health, a good environment, and health services.

One of the human rights that cannot be diminished in fulfillment under Article 28 I, paragraph 1 of the 1945 Constitution is the right to life (Article 28A). Other human rights are not subject to derogation. Based on considerations of security and public order, and in accordance with the stipulations of Article 28 J paragraph (1) and Article 28 J paragraph (2) of the 1945 Constitution.

Through a number of regulations, the Indonesian government has restricted the community's freedom of movement, and if it can be linked to the adoption of limitations on community activities so that the spread of Covid-19 can be stopped, then:

1. Large-Scale Social Restrictions (PSBB)

In order to expedite the handling of Covid-19, the Indonesian government has implemented and enforced a restriction on the freedom to move known as the PSBB, which is governed by Government Regulation No. 21 of 2020 about Large-Scale Social Restrictions. This Government Regulation gives effect to paragraph 11 of Article 1 of Law No. 6 of 2018 on Health Quarantine and paragraph (2) of Article 15 of the same law. Residents of a region thought to be infected with a disease and/or contaminated are often prohibited from partaking in certain activities in an effort to slow the spread of the disease and/or pollution. Epidemiological aspects, threat severity, effectiveness, resource support, operational technology, political, economic, social, cultural, and defense and security considerations should inform the PSBB's provisions.

The effectiveness of the PSBB measures in Indonesia in fulfilling health measure standards is a matter of ongoing debate and evaluation. On one hand, the PSBB measures were implemented with the aim of reducing the spread of COVID-19 and protecting public health. For the implementation of the measures, the government published rules that included the closure of non-essential companies, travel limitations,

demands for physical distance and the use of face masks. The government also made efforts to improve healthcare facilities' ability to handle COVID-19 cases.

However, there have been criticisms that the implementation of the PSBB measures in Indonesia was not sufficient to fulfill health measure standards. There were reports of inadequate enforcement of the measures, with some businesses and individuals not complying with the guidelines. There were also reports of insufficient testing and contact tracing, which may have contributed to the continued spread of the virus.

Even if, the implementation of the PSBB at the start of the Covid-19 pandemic helped control the spread of the virus and gave the government and hospitals time to prepare. However, these policies also have major social and economic impacts and require close monitoring and appropriate handling to be effective. Along with the development of the pandemic situation, policies such as PPKM were then implemented with a more focused approach to certain locations and times.

2. Enforcement of Restrictions on Community Activities (PPKM)

The Indonesian government enacted the Enforcement of Restrictions on Community Activities (PPKM) policy to stop the COVID-19 virus from spreading. The policy includes restrictions on various activities, such as large gatherings, religious activities, and work from home requirements. The enforcement of these restrictions is crucial to curb the spread of COVID-19 and protect public health.

The implementation of PPKM has been regulated through various government regulations and circulars, including the government regulation on community activity restrictions, the Ministry of Health circular on health protocols, and the Ministry of Home Affairs circular on the implementation of PPKM. The implementation of PPKM also involves the cooperation and coordination of various government agencies, such as the police, military, and local governments.

However, the implementation of PPKM has faced challenges and criticism, including concerns about the enforcement of the policy and the impact on the economy and people's livelihoods. There have also been reports of violations of health protocols and excessive use of force by law enforcement agencies in enforcing the restrictions.

The government must make sure that the application of PPKM complies with all applicable human rights principles, including the principles of proportionality and non-discrimination. Investigations should be conducted into any human rights breaches related to the implementation of PPKM, and those responsible should be held accountable.

3. PPKM 4 Levels

The Enforcement of Restrictions on Community Activities (PPKM) policy in Indonesia has four levels, which are based on the level of Covid-19 transmission in a specific area. The four levels of PPKM are as follows:

- a) Level 1 PPKM: Areas with low transmission rates of COVID-19. Restrictions are relatively relaxed, and most activities are allowed with strict health protocols in place.
- b) Level 2 PPKM: Areas with moderate transmission rates of COVID-19. Restrictions are tightened, and certain activities may be prohibited or limited in capacity.
- c) Level 3 PPKM: Areas with high transmission rates of COVID-19. Restrictions are further tightened, and non-essential activities are prohibited.
- d) Level 4 PPKM: Areas with very high transmission rates of COVID-19. Restrictions are the most stringent, and essential activities are limited to essential sectors such as healthcare and food supply.

Based on the adjustment indicators established by the government, specifically the Minister of Health, and using the rules created and established by the WHO, this fourth level of PPKM is calculated.

The introduction of limits on the right to mobility in Indonesia during the Covid-19 outbreak has, however, alarmed a number of community groups and human rights advocates, including the implementation of a policy of detaining people who do not comply with the rules of restriction and a policy of strict control.

Indonesia should make sure that restrictions on the right to move during the COVID-19 pandemic are governed by taking into account

universally acknowledged human rights principles and that no discriminatory or disproportionate actions are taken within these restrictions in accordance with international law.

b. United States

Since the country's founding, the federal government has had the right to oversee boundaries, particularly those that pertain to public health. To prevent the entrance, transmission, or spread of infectious illnesses from foreign countries into the States or possessions or from one State or possession into another, the Public Health Services Act (PHSA) gives the authority to adopt and enforce any laws that are deemed appropriate.

According to Section 361 of the PHSA, it is legal to apprehend and quarantine people who are not travelling interstate but who are conceivably a likely source of infection for people who will be moving from one State to another while infected with the disease in question.

President Trump has used the authority granted to him by Section 212(f) of the Immigration and Nationality Act (INA), which allows him to suspend the entry of all aliens or any class of aliens whose entry he finds... would be harmful to the interests of the United States. President Trump has made a number of proclamations under this authority to impose restrictions on the entry of foreign nationals who have recently visited nations affected by Covid-19.⁶⁹

⁶⁹ Edward C. Liu, 2020, COVID-19: Federal Travel Restrictions and Quarantine Measures. page 2

In the early phases of the Covid-19 outbreak, the Centers for Disease Control and Prevention (CDC) detained or segregated travelers returning from China and those left stranded on cruise ships. Although the virus was already known to exist in Finland, the United Kingdom, Italy, Iran, Spain, Germany, and Finland, on January 31, 2020, the administration implemented a travel ban that only applied to foreign visitors from China, with no requirement for symptom screening at entry or traveller quarantine.⁷⁰

The CDC asserted that these procedures were in line with previous legal rulings that supported the federal government's authority to quarantine or isolate returning travellers who might have been exposed to smallpox or who had been found to have drug-resistant tuberculosis.⁷¹

c. Italy

Italy was the first European country to implement strict nationwide travel restrictions in an effort to stop the spread of a Covid-19 outbreak that has hampered the economy, threatened to overload public health care, and killed more people than anywhere else in the world outside of China.⁷²

⁷⁰ Hanage, W. P. (et.al), COVID-19: "US federal accountability for entry, spread, and inequities—lessons for the future. European journal of epidemiology, Vol. 35, No. 11, 2020, page 996"

⁷¹ Lawrence O. "Gostin and Meryl Chertoff, Lockdowns, quarantines, and travel restrictions, during COVID and beyond: what's the law, and how should we decide?. Georgetown Law Faculty Publications and Other Works, April 2021"

⁷² Horowitz, J., 2020, "Italy Announces Restrictions Over Entire Country in Attempt to Halt Coronavirus, <https://www.nytimes.com/2020/03/09/world/europe/italy-lockdowncoronavirus.html?action=click&module=RelatedLinks&pgtype=Article>"

On the 31st of January 2020, as the first two people affected by Covid-19 were detected in Rome, the Prime Minister Conte nominated as Special Commissioner for the Coronavirus emergency the head of the Civil Protection (a reputable operative branch of the Council of Ministers), Angelo Borrelli. On the very same day, when two Chinese tourists were found to be positive, the government suspended all flights from and to China and declared the state of emergency for six months, since then always renewed.

The national authorities imposed two lockdowns. A man repatriated from Wuhan was found positive in February and, since then, the virus rapidly extended due to clusters of citizens in Northern Italy, leading to the first death on the 21st of February 2020. The day after the government placed 11 municipalities in Northern Italy under quarantine in the so-called 'red zone', while the areas around them were kept under control and on February 23 of 2020 the government managing the lockdown (hereafter named 'light lockdown').⁷³ Although there is an exit ban in place, there is better protection for individual rights thanks to the Italian government's increasing restrictive measures since the first significant Coronavirus epidemic in the nation in late February.⁷⁴

⁷³ Guzzetta G, (et al.), Impact of a nationwide lockdown on SARS-CoV-2 transmissibility. *Italy Emerg Infect Dis*, Vol. 27, 2021, pp. 267–70

⁷⁴ Layachi, O. B., International protection of human rights during the Covid-19 pandemic fight. *Systematic Reviews in Pharmacy*, Vol. 11, No.6, 2021, page 1334

Second, a tight one on March 8 ('tight lockdown').⁷⁵ The latter reduced social connections by imposing strict legislative restrictions on mobility. On March 11, 2020, the government shut down all bars, restaurants, and shops nationwide, with the exception of food markets and pharmacies (and a few other exceptions). Those who violate travel bans without a good cause were also subject to a 206 euro fine and a three month jail sentence. People are only permitted to leave the house for health-related reasons (including caring for sick relatives) or to buy essential supplies, perform sports, or work (if it is not possible to do it from home).

Despite receiving widespread public support, the travel limitation laws were also referred to as the biggest violation of fundamental rights in Italian republican history. However, Article 16 of the Italian Republic's Constitution provides that laws may be passed restricting travel for reasons of safety or health.

Even if, the Italian Constitution does not contain a specific discipline for the emergency. It, however, establishes a type of soft law named Decree-Laws. In cases of severe necessity and urgency, the government may issue a decree-law, a kind of executive rulemaking with the authority of law. The president of the republic signs it, and it is immediately submitted to Congress for ratification.⁷⁶

⁷⁵ Guzzetta G, *loc.cit.*

⁷⁶ Flaminia Aperio Bella, (et.al.), The Role of Covid-19 Soft Law Measures in Italy, European Journal of Risk Regulation, Vol. 12, 2021, page 95

2. Principle of Proportionality as a Guide in Implementing Travel

Restrictions

At this point, it will be explained how the principle of proportionality can be a guide for countries in launching entry regulations and travel restrictions in the Covid-19 condition. This point will also explain the dilemma faced in using the principle of proportionality as a guide for countries.

Specific guidelines on the acceptable restrictions on the right to freedom of movement are provided in General Comment No. 27. The General Comment begins by stating that freedom of movement is a necessary precondition for a person's free development and connects with a number of other rights guaranteed by the Covenant.⁷⁷ It is stated that:

“The permissible limitations which may be imposed on the rights protected under Article 12 must not nullify the principle of liberty of movement, and are governed by the requirement of necessity provided for in Article 12, paragraph 3, and by the need for consistency with the other rights recognized in the Covenant.”

The fundamental civil and political rights of people, including the right to freedom of movement, are outlined in the ICCPR. This privilege, however, is not unqualified and may be curtailed under specific conditions. If States want to restrict people's freedom of movement, they must make sure that their actions respect human rights. The International Covenant on Civil and Political Rights (ICCPR) includes provisions for limitation and derogation, and this is where the Siracusa Principles come into play. A group of 31

⁷⁷ General Comment No. 27: Article 12 (Freedom of Movement), at ¶1

experts in international law drafted certain criteria for "soft law" that are now generally accepted as a legal standard for measuring the justness of restrictions on human rights.⁷⁸ The Principles specify a number of prerequisites for limits to be legitimate, including:

- a. "Whenever a limitation is required in the terms of the Covenant to be necessary, this term implies that the limitation is based on one of the grounds justifying limitations recognized by the relevant article of the Covenant"
- b. responds to a pressing public or social need;
- c. pursues a legitimate aim; and
- d. is proportionate to that aim.⁷⁹

A crucial guideline for establishing the legality of travel restrictions under the ICCPR is the proportionality principle. According to the legal principle of proportionality, the government's or other legal bodies' acts must be evaluated against how they will affect people's individual rights and freedoms in order to achieve their objectives. This idea of proportionality, as applied to the application of infractions, refers to the harmony required between the goals the government must pursue in restricting individual rights and freedoms and the effects that result on those rights and freedoms.

Any limitation on the right to freedom of movement must comply with the proportionality principle and be necessary, reasonable, non-

⁷⁸ Lawrence Gostin & Benjamin Berkman, *Pandemic Influenza: Ethics, Law, and the Public's Health*, 59 ADMIN. L. REV. 121, 146 (2007)

⁷⁹ Siracusa Principles, *op. cit.*, ¶10

discriminatory, and legally justified. This means that limits on travel must be put in place for a justifiable reason, such as preserving the public's health, safety, or order. In order to accomplish that goal, the restriction must also be as little intrusive as feasible, and the harm it causes must not outweigh the gain it brings about.

The Siracusa Principles also include a clause that deals explicitly with rights restrictions for public health concerns. It reads as follows:

“Public health may be invoked as a ground for limiting certain rights in order to allow a state to take measures dealing with a serious threat to the health of the population or individual members of the population. These measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured.”⁸⁰

The necessity test and a proportionality component work alongside one another. General Comment No. 27 refers to limits:⁸¹

14. “Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected.”

15. “The principle of proportionality has to be respected not only in the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law. States should ensure that any proceedings relating to the exercise or restriction of these rights are expeditious and that reasons for the application of restrictive measures are provided.”

16. “States have often failed to show that the application of their laws restricting the rights enshrined in [A]rticle 12, paragraphs 1 and 2, are in conformity with all requirements referred to in [A]rticle 12, paragraph 3. The application of restrictions in any individual case must be based on clear legal grounds and meet the test of necessity and the requirements of proportionality.”

⁸⁰ *Ibid.*, ¶25

⁸¹ General Comment No. 27: Article 12 (Freedom of Movement), at ¶14-16

According to a recent study, the Covid-19 epidemic has made it challenging to put into practise the Siracusa Principles on Health Emergency because they are designed to be generically applicable to all public catastrophes. The Siracusa Principles state that when enforcing a restriction, a state shall not employ more restrictive tactics than are necessary to achieve the restriction's intended result. Additionally, proper consideration must be given to the World Health Organization's international health laws when restricting some rights for reasons of public health. Once more, the WHO's recommendations should be taken into account when conducting the proportionality test.

Thus, the authors make the following analysis whether a hearing has followed the principle of proportionality and these restrictions must comply with the Siracusa Principles to ensure that they are legitimate, necessary, proportionate, and non-discriminate.

Indonesia came first with their PSBB policy. This law restricts one's ability to roam freely, forbidding them from going from one location to another. The PSBB was put into place by the state with the intention of protecting people from Covid-19. PSBB is a catastrophe for humanity even though it seems to be a pro-poor strategy. The PSBB fails to meet the requirements for restricting rights outlined in international human rights law. The following can be looked at by the author in order to analyse PSBB Indonesia using the Siracusa Principles.

- a. Legitimately required or mandated by law: The PSBB's policy failed to meet the legal requirements mandated by law. Article 60 of Law No. 6 of 2018 concerning Health Quarantine does not consider the PSBB to be implementing regulations since it does not meet the requirements of formal standards. The Covid-19's quick acceleration and agile handling are the main reasons for its PSBB classification. The delegation from Article 60 of this Law is general and can be used in any situation that meets the definition of a Public Health Emergency.⁸² Not only that, in the formation of the Government Regulation, there is no element of renewal of substance but only copying the regulations above it. For example, see Article 11 of Undang-Undang Nomor 6 Tahun 2018 Concerning Health Quarantine, Article 2 of Undang-Undang Nomor 6 Tahun 2018 Concerning Large-Scale Social Restrictions, Article 4 of Undang-Undang Nomor 6 Tahun 2018, Article 59 of Undang-Undang Nomor 6 Tahun 2018, and Article 59 Paragraphs (3) and (4).
- b. Necessary and proportionate: It is crucial to examine whether the Covid-19 pandemic truly poses a "threat to the life of the nation" before deciding whether a public emergency that endangers the country's life can serve as the justification for legislation that violates human rights. It is mentioned in consideration of PSBB that the goal

⁸² Manotar Tampubolon, 2021, "Impoverishment of the Poor and Derogation of Human Rights During the Covid-19 Pandemic in Indonesia: Testing the Emergency Measure and Siracusa Principles in Large-Scale Social Restriction Journals of Human Rights and Social Work, Vol. 7, page 99"

of the rule was to slow the spread of Covid-19. However, it failed to compile reliable information demonstrating that the nation's life was in danger from the Covid-19 pandemic. One factor for this was that the nation's testing systems were deficient and even proclaimed to be the worst in the entire globe.⁸³

- c. Non-Discrimination: There were concerns that the PSBB policy may have disproportionately affected certain groups, such as the poor and those in the informal sector, who may not have been able to comply with the restrictions due to their economic situation.

Second, Italy has implemented various travel restrictions that limit the freedom of movement of its citizens and foreign nationals. These restrictions, like any other restriction on human rights, must comply with the Siracusa Principles to ensure that they are legitimate, necessary, and proportionate. To analyze Italy provisions with the Siracusa Principles, the author can examine the following.

- a. Prescribed by law: Italy's Decree-Law provisions related to COVID-19, including lockdown measures and restrictions on movement and gatherings, have been implemented to protect public health and control the spread of the virus. These measures have been periodically adjusted based on the severity of the outbreak in different regions of the country. In any case, despite its voluminous

⁸³ *Ibid.*, page 97

use, soft law has not played a crucial role in restricting constitutional rights.

- b. Necessary and proportionate: The appropriate legal instrument offered by the Italian legal system to handle situations like the current epidemic is the Decree-Laws, which were created in Italy during a state of emergency to be utilised in situations, crises, or unusual cases of necessity and urgency. However, some could counter that less restrictive alternatives, such testing and quarantine rules for travellers, could accomplish the same result.
- c. Non-Discrimination: There have been some concerns that Italy's travel restrictions may discriminate against certain countries or populations, particularly those outside of the European Union. For example, non-EU citizens may face additional requirements or restrictions when traveling to Italy compared to EU citizens, which some argue may be discriminatory. However, Italy has generally been consistent in its approach to restricting travel based on the level of Covid-19 transmission in different areas, rather than specific countries or populations.

Lastly, In the context of United States travel restrictions, we can analyze these measures using the following principles:

- a. Prescribed by law: In reaction to the Covid-19 outbreak, the United States imposed travel restrictions with the intention of stopping the virus's spread and safeguarding the general public's health. The

widespread consensus is that this goal is legitimate, especially in light of a pandemic that has spread worldwide.

- b. Necessary and proportionate: The United States travel restrictions have been implemented in various stages, targeting different countries and regions depending on the level of COVID-19 transmission.⁸⁴ While some may argue that the restrictions are overly broad or indiscriminate, they have generally been targeted at areas with higher levels of transmission. Additionally, exemptions are available for certain categories of travelers, such as U.S. citizens and permanent residents.⁸⁵
- c. Non-Discrimination: The United States travel restrictions have been criticized for potentially discriminating against certain countries or populations. For example, the initial version of the travel ban targeted several predominantly Muslim countries, leading to accusations of religious discrimination.⁸⁶ However, subsequent versions of the ban have been more broadly focused on Covid-19 transmission levels, rather than specific countries or populations.

⁸⁴ U.S. Centers for Disease Control and Prevention. (2021). "COVID-19 Travel Recommendations by Destination." <https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notice.html>

⁸⁵ U.S. Customs and Border Protection. (2021). COVID-19: Travel Restrictions and Exceptions. <https://www.cbp.gov/newsroom/coronavirus/travel>

⁸⁶ American Civil Liberties Union. (2017). Trump's New Muslim Ban Is Still a Muslim Ban. <https://www.aclu.org/news/trumps-new-muslim-ban-still-muslim-ban/>