

The Principle of Reciprocity in Human Rights Limitations: A Perspective on Indonesia's Response to COVID-19

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Abstract

As COVID-19 continues to spread globally, States are conducting containment measures such as quarantines and social-distancing to limit its spread, often at the cost of economical loss and human rights exercise impediments to its citizens. This Article investigates the principle of reciprocity, which originated in discourses on ethics and public health, and is now gaining traction in international human rights discussions. The Article looks into how the principle of reciprocity imposes an obligation for States to alleviate the economical and human rights exercise impediments caused through imposition of legitimate right-limiting measures: including COVID-19. Finally, the article analyses the impact of economical constraints towards the full implementation of reciprocity. This will yield better understanding of the consideration of States when choosing between differing right-limiting measures.

Keywords: human rights, reciprocity, economic scarcity, COVID-19, social-distancing

Abstrak

Dengan penyebaran COVID-19 secara global, negara-negara melakukan berbagai tindakan seperti karantina dan pembatasan sosial untuk menghentikan penyebarannya yang seringkali memberi dampak ekonomi dan hambatan pelaksanaan hak asasi manusia pada masyarakat. Artikel ini mengusut prinsip resiprositas, yang muncul dari diskursus terkait etika dan kesehatan masyarakat, dan bagaimana prinsip ini mulai populer dibahas pada diskusi-diskusi di ranah hak asasi manusia. Artikel ini melihat bagaimana prinsip resiprositas memberikan kewajiban bagi negara untuk mengurangi dampak ekonomi dan hambatan pelaksanaan hak asasi manusia akibat diberlakukannya kebijakan terkait COVID-19. Terakhir, artikel ini akan melihat dampak kendala ekonomi terhadap implementasi sepenuhnya dari prinsip resiprositas. Hal ini akan memberikan pengertian terkait keputusan dan tindakan negara dalam menentukan kebijakan yang mengurangi hak asasi manusia.

Kata Kunci: hak asasi manusia, resiprositas, kendala ekonomi, COVID-19, pembatasan sosial

A. Introduction:

The rapid contagion of COVID-19 by the SARS-CoV-2 coronavirus strain these past few months has put the world on high alert. Although the virus was first detected as recently as late December 2019 in Wuhan, China,¹ as of 29 July 2020 there has been upwards of 16 million individuals globally that confirmed positive for the virus.² These conditions have forced governments worldwide to respond by implementing unprecedented public health interventions, ranging from quarantines, obliging mask-wearing in public, enforcing travel restrictions, to invoking social distancing. Although non-pharmaceutical, those measures have been successfully used in the past to combat the spread of contagious diseases such as influenza.³ And so far, with the cure for COVID-19 relatively far off in the future, these public health interventions present a stop-gap solution to prevent a massive influx of patients overloading national health infrastructures.

However, public health interventions that prevent and contain the spread of COVID-19 inadvertently limit the free exercise of activities that satisfy the human rights exercise for the very people they are supposed to help—entire populations are prevented from easily accessing basic amenities and services. Furthermore, vulnerable population groups, e.g. those living in poverty and informally employed, are more adversely affected by the pandemic due to the unstable nature of their income.⁴ As States understand the effects of overly draconian measures, emphasis has shifted to policies that are least-intrusive, gradual, and proportional to a legitimate goal in accordance with international human rights law. Nevertheless, current COVID-19 public health interventions will inevitably limit the full exercise of human rights of many individuals absent the discovery of the vaccine. With that in mind, some have argued in favour of a policy of compensation, granted by the state on a reciprocal basis each time an individual's rights are limited for public health interests as a way to reach human-right-proportionality in a public health intervention.

This article with focus on the principle of reciprocity in public health interventions as follows: Section B will introduce the principle of reciprocity in public health ethics and human rights discourse, alongside its applications for reducing human rights grievances caused by public health interventions. Section C looks at Indonesia's COVID-19 public health interventions in the context of the principle of reciprocity. Section D highlights the inhibiting factor of economic scarcity towards States' full implementation of the principle of reciprocity. Section E will conclude by highlighting the main findings of this article.

B. The Principle of Reciprocity: Human Rights Discourses of Public Health Interventions

1. Framework of Reciprocity in Public Health Ethics

¹ World Health Organization. (2010). *Guidance on Ethics of Tuberculosis Prevention, Care, and control*, p.1.

² World Health Organization. (2020). *Coronavirus Disease (COVID-19) Situation Report-191: Data as received by WHO from national authorities by 10:00 CEST, 29 July 2020*. Retrieved July 30, 2020 from https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200729-covid-19-sitrep-191.pdf?sfvrsn=2c327e9e_2, p.1

³ Ahmed, F., Zviedrite, N., & Uzicanin, A. (2018). Effectiveness of workplace social distancing measures in reducing influenza transmission: a systemic review. *BMC Public Health*, 18: 518, 525.

⁴ Amnesty International. (2020). *Responses to COVID-19 and States' Human Rights Obligations: Preliminary Observation*. Retrieved May 7, 2020 from <https://www.amnesty.org/download/Documents/POL3019672020ENGLISH.PDF>, p. 6

In broad terms, reciprocity can be understood as notions of mutual regard or fairness. Reciprocity implies a proportional undertaking between what is taken and received.⁵ The principle of reciprocity demands that public health interventions which limit the rights of individuals require compensation or restitution as to reduce any intolerable treatment and reduce grievances caused as a result of the intervention.⁶ For governments, the application of reciprocity not only prohibits 'unreasonable limitations' that disproportionately burden the rights of individuals, but it also requires that any 'reasonable limitation' to rights must be accompanied with some reciprocal compensation that ease the burdens placed upon individuals.⁷

In applying the principle of reciprocity, compensation or restitution given under the banner of reciprocity cannot be interpreted as transactional consent to the limitation of rights. Instead, it must be viewed as means to reduce grievances caused by limitations to the free exercise of certain rights imposed by government's measures, based upon and within a view of providing fairness and justice.⁸ Under that basis, the application of reciprocity in government measures can provide popular legitimacy when public health interventions limit the rights of a given population. Practically, applying the principle of reciprocity also motivates compliance to public health interventions.⁹ Additionally, in the context of public health ethics, providing reciprocal compensation for public health interventions provides a two-fold benefit; firstly is providing a populist basis for the benefit of public health intervention, and second, such compensation incentivizes compliance with public health interventions that limit individual rights.

It should be noted however, that the capacity of a reciprocal compensation or restitution to motivate the compliance of individuals in performing certain public health interventions, does not in itself constitute support for the moral justification of those measures. There can be morally legitimate interventions that fail to gain compliance, and morally illegitimate interventions that are broadly supported and complied by the public.¹⁰

Having understood the principle of reciprocity in ethical discourses of public health, the question then arises whether reciprocity can be applied in human rights contexts.

2. Extracting the Principle of Reciprocity in Human Rights and Public Health

In human rights discourses on right-limitations, the principle of reciprocity can be extracted by looking into Article 18 of the Siracusa Principles on Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (Siracusa Principles).¹¹ The Siracusa Principles are drafted by international jurists as a means to interpret and apply the provisions on limitation and derogation of rights under the International Covenant on Civil and Political Rights (ICCPR). The document was published by the United Nations Commission on Human Rights, which was later incorporated into the General Comment Number 14 on the Right to Health. In that sense, the Siracusa Principles reflect 'soft law' that can be used to provide interpretation to the provisions of the ICCPR. It states that "*Adequate safeguards and effective remedies shall be provided by law against*

⁵ Viens, A. M., Bensimon, Cecile M., Upshur, Ross E. G. (2009). Your Liberty or Your Life: Reciprocity in the Use of Restrictive Measures in Contexts of Contagion, *Bioethical Inquiry*, 6: 207, 211-212

⁶ Smith M., J., & Upshur R. (2019) Pandemic Disease, Public Health, and Ethics. In A.C. Mastroianni, J.P. Kahn, and N.E. Kass (Eds.). *The Oxford Handbook of Public Health Ethics* (pp. 797-811). Oxford, United Kingdom: Oxford University Press, p. 805

⁷ Viens et al., (n5)

⁸ Tulchinsky Theodoroe H., & Varavikova Elena A. (2009) *The New Public Health: An Introduction for the 21st Century*. (2nd ed.). Cambridge, Massachusetts: Elsevier Academic Press, p. 592

⁹ Smith, M. J., Bensimon, C. M., Perez, D. F., Sahni, S. S., and Upshur, R. E. G (2012) Restrictive Measures in an Influenza Pandemic: A Qualitative Study of Public Perspectives. *Canadian Journal of Public Health* 103(5): 348, pp. 350-351.

¹⁰ Viens et al., (n5) 213

¹¹ UN Commission on Human Rights. (28 September 1984). *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*. E/CN.4/1985/4, Article 18

*illegal or abusive imposition or application of limitations on human rights.*¹² The Search Results Web result with site links Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 14: The Right to the Highest Attainable Standard of Health (GC 14) goes into further detail when interpreting these requirements in context of public health limitations, whereby “...public health are often used by States as grounds for limiting the exercise of other fundamental rights. The Committee wishes to emphasize that the Covenant’s limitation clause ... is primarily intended to protect the rights of individuals rather than to permit the imposition of limitations by States.¹³ These provisions can be interpreted in references in Article 18 of the Siracusa Principles and GC 14 whereby a means to provide proportional limitations during public health interventions could include a compensatory mechanism to reduce grievances towards the free exercise of rights..¹⁴

When looking into the rights under the ICCPR, rights that can explicitly be limited for reasons of public health include, the freedom of movement, the right to peaceful assembly, freedom to manifest religion, and freedom of association. Based on this exhaustive list, one could restrictively interpret Article 18 of the Siracusa Principles and GC 14 to mean that reciprocal compensation is a principle only applicable for those limited number of rights. However, during public health interventions, such as imposition of quarantines and travel bans, restrictions often place hardships of accessing a wider spectrum of positive rights, including the right to food, the right to education, and even the right to find adequate work.¹⁵ Therefore, all these possible limitations of human rights during a public health intervention must be taken in consideration with GC 14, which requires adequate safeguards and effective remedies to *all* human rights that are reduced or is consequentially limited due to measures done for public health.¹⁶ Under such an interpretation, there is a normative basis for extracting a principle of reciprocity too alleviate human rights restrictions during public health interventions. Nevertheless, the application of the principle of reciprocity is not meant to replace existing analysis of the necessity and/or proportionality of States’ measure that restricts human rights. The application of reciprocity is useful insofar as a factor of consideration and tool that can be discretionally used by States in order to maintain proportionality during public health interventions that limit the free exercise of rights of individuals. In applying reciprocal measures, every limitation must still be measured in its necessity and proportionality.

3. The Implementation of the Principle of Reciprocity in context of Public Health Interventions

Before the occurrence of the COVID-19 pandemic, the allocation of reciprocal compensation schemes for public health interventions, exists primarily in parts of the world that were significantly impacted by past pandemics. Key examples include reciprocal policies in Hong Kong, Singapore, and Taiwan during the SARS outbreak in 2003,¹⁷ and reciprocal policy during the MERS-CoV outbreak in South Korea.¹⁸ Measures that were granted include:

¹² Ibid.

¹³ UN Office of the High Commissioner for Human Rights. (11 August 2000). CESCR General Comment No.14: The Right to the Highest Attainable Standard of Health (Art. 12). *E/C.12/2000/4*, para. 28.

¹⁴ Silva D., Smith M., J. (2015). Commentary: Limiting Rights and Freedoms in the Context of Ebola and Other Public Health Emergencies: How the Principle of Reciprocity Can Enrich the Application of the Siracusa Principles. *Health and Human Rights Journal*. 17(1): 52, 53

¹⁵ Giubilini A., Douglas T., Maslen H., & Savulescu J. (2018). Quarantine, isolation and the duty of easy rescue in public health. *Developing World Bioeth.* 18:182, 186; Amnesty International (n4) 7

¹⁶ Silva D., Smith M., J. (n13) 54-55

¹⁷ Rothstein Mark A., & Talbott Meghan K. (2007). Job Security and Income Replacement for Individuals in Quarantine: The Need for Legislation, *Journal of Health Care Law and Policy*, 10: 239, 243-244

¹⁸ Kim, Ock-Joo. (2016). Ethical Perspectives on the Middle East Respiratory Syndrome Coronavirus Epidemic in Korea. *Journal of Preventive Medicine & Public Health*. 49: 18, 19

- Establishment of loan programmes for small and medium-sized enterprises impacted by social-distancing in Singapore;
- Amendment of the Workers' Compensation Act to include SARS patients in Singapore;
- Financial assistance provided to quarantined individuals in Hong Kong and families of SARS;
- Providing full paid leave for all quarantine employers in Taiwan¹⁹;
- Compensation for families that stayed home to prevent transmission of disease in South Korea; and
- Delivering food and basic necessities based on the size of the family²⁰

Acknowledging these economic benefits and the exercise of rights provided to individuals, it should be noted that in hindsight, governments were unable to compensate each and every affected individual, and in situations where compensation was given, oftentimes it is not enough.²¹

With that said, the inclusion of the principle of reciprocity in human rights should not be interpreted as a formal requirement of compensation or restitution in all contexts of public health interventions. Instead, such principle must be considered, when appropriate and feasible, to reduce limitations of rights for reasons of public health. Nevertheless, the principle of reciprocity does not mandate that States provide a compensatory mechanism to the extent that all burdens to the rights of citizens are eased (nor would it be possible, as will be explained in Part D with Indonesia as a case in point). The principle will serve as a tool that can be used by States in striving towards a proportional limitation of the free exercise of rights in public health interventions. Thus, the inclusion of this principle in discourses of human-right-limitations during public health interventions would add a creative tool that can be implemented by States.²²

C. A (Brief) Look into Indonesia's COVID-19 Response: A Perspective from the Principle of Reciprocity

The current outbreak of COVID-19 in Indonesia presents a human rights and ethical challenge of balancing between two competing issues, which are: (1) the prevention and containment of COVID-19 through imposing social-limiting measures, and (2) preventing unjustifiable infringements of liberties and disproportionate limitations to human rights caused by these social-limiting measures through reciprocal compensation. This section will attempt to look into Indonesia's COVID-19 response and its ensuing restrictions of human rights, as well as Indonesia's subsequent application of the principle of reciprocity to reduce such restriction of rights. Although this brief elaboration is not intended to be a comprehensive assessment of Indonesia's response against COVID-19, it will hopefully provide a basic understanding on applications of reciprocity in Indonesia's measures against COVID-19.

1. The General Framework of Indonesia's Measures Against COVID-19²³

Indonesia's measures on preventing and containing COVID-19 are primarily based on the Law on Health Quarantine of 2018. Under the legislation, a Large-Scale Social Distancing (Pembatasan Sosial Berskala Besar, or "PSBB") is defined as restrictions on certain activities of populations in an area that are allegedly infected by disease and/or contaminated as to prevent the possibility of

¹⁹ Rothstein Mark A., & Talbott Meghan K. (2007). Encouraging Compliance With Quarantine: A Proposal to Provide Job Security and Income Replacement. *American Journal of Public Health*, 97:49, 53

²⁰ Kim (n27) 20

²¹ Holm, Soren. (2020). A General Approach to Compensation for Losses Incurred due to Public Health Interventions in the Infectious Disease Context. *Monash Bioethics Review*.

²² Silva D., Smith M., J. (n13) 54

²³ All information provided herein are correct at the time of the article's writing.

the disease spreading or contamination.²⁴ The imposition of PSBB in any given area is done after considering epidemiology factors, the scale of the threat, the effectivity of the measure, availability of resources, economic impact, and socio-cultural and security factors.²⁵ Generally, a PSBB is a moderate social-restriction, whereby its application are still subject to exceptions that allow some moderate movement of individuals.²⁶

In the specific context of COVID-19, PSBB is implemented through Government Regulation on Large-Scale Social Distancing of 2020 and the Ministry of Health Regulation No. 9 concerning Guidelines on Large-Scale Social Distancing of 2020. These two regulations decentralized the implementation of PSBB, whereby Governors, Regents, and/or Mayors in their respective jurisdictions may propose for the imposition of PSBB for a limited period of time to the Ministry of Health, in consideration of increasing confirmed cases and/or deaths caused by COVID-19.²⁷

Although the specific implementation of PSBB varies between provinces, regencies, and/or cities, these regulations provide the general framework of containing the spread of COVID-19 in a regional level in Indonesia. If granted approval, regional governments will be obliged to limit movement going inside and outside of their jurisdictions, which at the very least, must meet these following criteria:²⁸

1. closure of schools and workplace;
2. restriction of religious activities; and/or
3. restriction of activities in public space or public facilities.

In addition to imposing PSBB in areas of the country hard-hit by COVID-19, the government has also prohibited the tradition of annual exodus (*mudik*) for millions of Indonesians during the Lebaran holiday in the month of May.²⁹ This is done to prevent massive influxes of people from harder hit metropolitan areas moving into rural areas of Indonesia, thus accelerating the likelihood of COVID-19 spreading across the country. Despite the implementation of such policy, COVID-19 continues to be widespread and has currently affected all 34 provinces in Indonesia within 473 cities and/or regencies.³⁰

2. COVID-19 Impact and the Application of the Principle of Reciprocity by the Indonesian Government

Although the measures implemented have the potential of effectively preventing and containing the spread of COVID-19, these same measures have the potential of incurring severe losses over the medium-to-long term—all relating to the economy. As an example, the forced closure of workplaces is causing daily compensated workers and those who work in informal ‘gig’ economies to struggle in meeting basic needs—many are struggling to provide food on their plates.³¹ Even if immediate basic needs are covered, the potential repercussions of lost income could amount to repossession of property, eviction, or even default. Given this grim outlook, many Indonesians who have no

²⁴ Indonesia, Law concerning Health Quarantine of 2018, art. 1(11)

²⁵ Ibid, art. 49(2)

²⁶ Shidiq, Akhmad Rizal. (2020, April 10). Our health system’s capacity vs demand from large-scale social distancing. *The Jakarta Post*

²⁷ Indonesia, Government Regulation on Large-Scale Social Distancing of 2020, art. 6 (1).

²⁸ Ibid, art. 4 (1))

²⁹ Indonesia, Minister of Transportation Regulation concerning Transportation Control during Eid Fitr 2020, art. 1(1).

³⁰ Indonesia, The National Agency for Disaster Countermeasure. (2020). *The COVID-19 Situation in Indonesia*.

Retrieved 29 July 2020 from <https://covid19.bnpb.go.id/>

³¹ Nurbaiti, Alya. (2020, April 21). Hunger Hits as many Indonesians struggle during COVID-19 Pandemic. *The Jakarta Post*

alternative source of income are voluntarily risking COVID-19 transmission by continuing work in the face of worsening economic conditions.

Realizing this conundrum, the Indonesian government have instated reciprocal measures to provide social aid for affected individuals and lessen the burdens caused by restrictions of human rights. In order to gather necessary funds for the pandemic, the government removed the cap on budget deficits above 3% until the 2022 budgetary year, which will be spent specifically on COVID-19 policies, including aid.³²

In implementing this regulation, the Ministry of Finance Regulation on COVID-19 Financial Policy of 2020 stipulates that social aid will be allocated towards providing relief to those impacted by COVID-19, which includes:³³

1. Additional social safety net³⁴;
2. Financial support for non-wage-earning workers (i.e. those who earn income without a steady wage) and non-workers;
3. Incentives for medical and non-medical workers involved in handling the COVID-19 pandemic, including compensation for the deaths of medical workers during the COVID-19 pandemic, compensation for patients of the COVID-19 pandemic;
4. Supplementary stock for fulfilment of basic and market/logistical operation; and/or
5. Other forms of reciprocity provided by the Indonesian government includes tax incentives,³⁵ reimbursement of hospital expenditure in treating COVID-19 related patients,³⁶ reallocation of the Village Funds scheme to reduce economic impact of COVID-19 in villages,³⁷ credit relaxation and financing for small and medium-sized enterprises,³⁸ additional funding for schools to provide online learning during the pandemic,³⁹ and incentives for banks that provide economic stimulus in the form of credit financing for small and medium enterprises affected by COVID-19.⁴⁰ All these measures implemented by the government in providing relief for individuals affected by COVID-19 is indicative of the principle of reciprocity.

With the inclusion of these measures to balance human rights restrictions caused by COVID-19 prevention and containment measures, communities and individuals affected by restrictive public health interventions are spared from excessive burdens to human rights throughout the pandemic. As such, under the perspective of human rights, implementation of the principle of reciprocity allows States to provide the least intrusive restriction, in order to achieve proportional balancing between the interest of public health with the restriction on human rights during public health interventions.

³² Indonesia, Government Regulation in Lieu of Law concerning COVID-19 of 2020, art. 2(1)(a)

³³ Indonesia, Financial Services Authority Regulation concerning Economic Stimulus for COVID-19 of 2020, art. 9(1)

³⁴ In elaboration of what constitutes additional social safety net, the regulation provides protection, *inter alia*, for unemployed workers and providing electricity subsidies, housing subsidies, and basic necessities for families.

³⁵ Indonesia, Minister of Finance Regulation on Tax Incentives during COVID-19 Pandemic of 2020, art. 2(1)

³⁶ Indonesia, Minister of Health Circular Letter on Reimbursement of Hospital Costs of 2020, sec. 3. Criteria of patients that receive guarantee of government subsidy for COVID-19 are; (i) people under observation; (ii) patients under supervision; and (iii) confirmed COVID-19 patients

³⁷ Indonesia, Minister of Villages Regulation on Utilization of Village Funds, art. 8a(2)

³⁸ Indonesia, Financial Services Authority Regulation concerning Economic Stimulus for COVID-19 of 2020, art. 7

³⁹ Indonesia, Ministry of Education and Culture Regulation No.19 of 2020

⁴⁰ Indonesia, Central Bank of Indonesia Regulation No.22 concerning Incentives for Banks during COVID-19 of 2020, art. 2(1)

D. Economic Scarcity and Reciprocity in Developing States: Indonesia's Reluctance for Quarantine

Ideally, reciprocal compensation should be applied towards all burdens caused by measures limiting the free exercise of human rights by states. However, economic constraints render it practically infeasible even for the most developed states to completely implement reciprocal compensation. Examples of economic constraints in applying the highest standards of reciprocity in the most developed states may take the form of prioritization of the budget towards competing objectives,⁴¹ whilst in worst cases of developing and least developed states economic scarcity takes form in the oft-cited pervasive insufficiency of capital to alleviate human rights impacts of public health interventions.⁴²

Given the reality of the situation, it is not surprising that only very few economies, e.g. the most advanced, are implementing truly reciprocal compensatory policies for minimizing the effects of human rights restrictions.⁴³

In the developing world, the situation is even more dire: the full implementation of reciprocity remains a luxury that few States can afford. This presents a double conundrum for developing States: they must deal with pervasive concerns of insufficient budget, whilst simultaneously attempting counter the human rights and economic impact of COVID-19 through reciprocal policies during public health interventions.

For policy makers in a COVID-19 pandemic, social limiting measures that restrict human movement remain one of the most effective ways of stymieing the spread of the pandemic. However, higher degrees of restrictions (for example, through a quarantine) will create greater impediments to the human rights of individuals, inducing a proportional push for reciprocal measures that reduce such impediments. Faced with this option, developing States with less economic resources are forced to shy away from the most effective (and reciprocally expensive) measures of social limitations, instead relying on less effective (and reciprocally affordable) means of social limitations.

Taking example of Indonesia's response to COVID-19, a limited state budget limit the full implementation of reciprocity in Indonesia. Currently, Indonesia has chosen to implement a Large-Scale Social Distancing towards hard-hit parts of the country under the basis of Law No. 6 of 2018 concerning Health Quarantines. In practice, this means a moderate social-distancing restriction that still allows human activity inside, to, and from the affected area.⁴⁴

However, Law on Health Quarantine of 2018 also contain other options available for the government in order to respond to a disease outbreak, each corresponding with different pecuniary obligations. One such option is the imposition of Regional Quarantine over certain regions to stop the spread of a disease.⁴⁵ Under a Regional Quarantine, all access to the affected regions will be heavily guarded and restricted by the police and individuals inside the quarantine region will be prohibited from going outside, thus heavily restricting freedom of movement. Seemingly like a silver

⁴¹ In context of COVID-19, inhibition of reciprocity for the most developed of States could manifest in; (i) debates of the 'right' amount of compensation resulting in less compensation than previously proposed, or; (ii) measures to "open-up" the economy and inducing people to go back to work, whilst simultaneously decreasing funding for social aid to individuals staying at home during the pandemic. Leaving aside those measures' virtue or iniquity, those measures inhibit the application of reciprocity whilst highlight the availability of resources for action rather than inaction due to scarce resources.

⁴² Holm (n20)

⁴³ See German Federal Ministry of Finance. (2020). Emerging from the crisis with full strength. Retrieved July 30, 2020 from <https://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Topics/Public-Finances/Articles/2020-06-04-fiscal-package.html>

⁴⁴ Samboh, Esther and Akhlas, Adrian Wail. (2020, April 13). Explainer: Indonesia to finance coronavirus battle mostly through debt. *The Jakarta Post*

⁴⁵ Indonesia, Law concerning Health Quarantine of 2018, art. 54

bullet, a Regional Quarantine is a more effective public health intervention that would cut disease transmission of COVID-19 considerably faster.⁴⁶

Although it is easy to blame the government of Indonesia of failing its negative obligation to protect its citizens from COVID-19 by only (and belatedly) imposing large-scale social distancing, there is a catch to imposing a regional quarantine. Under the Law on Health Quarantine of 2018, during a Regional Quarantine the basic living conditions of people and livestock inside the quarantined area will be under the responsibility of the central government.⁴⁷ Effectively, this would place an absolute obligation of reciprocity to provide for the livelihood of all individuals in a quarantined region. Although a noble goal, this is economically impossible.⁴⁸ This should be taken in contrast with reciprocal obligations imposed in Large-Scale Social Distancing, which require only reciprocal obligations of “considering the basic living conditions of citizens” when implementing a Large-Scale Social Distancing.⁴⁹ Even with this comparatively conservative application of reciprocity, the government has been forced to uncap its budgetary deficit restrictions from 3% up to a planned 5.07% of the nation’s GDP, due to increased pressure for stimulus and social net spending.⁵⁰ Given this stark reality, the relative economic scarcity of Indonesia—taking the form of limited budgetary capabilities—presents an inhibiting factor to the full implementation of the principle of reciprocity in Indonesia’s responses towards COVID-19.

E. Conclusion

This article has elaborated on the principle of reciprocity in present discussions of public health ethics, its import into human rights discourse, and its implementation into public health interventions. For that reason, when the principle of reciprocity is applied in ethical discourse, it acts as moral validation for public health interventions. In context of human rights, the normative principle of reciprocity can be extracted from existing human rights instruments as an analytical tool and factor to consider when justify restrictions towards human rights in public health purposed measures. Subsequently, this article considered and analysed the implementation of the principle of reciprocity by Indonesia in its response to the COVID-19 pandemic. Although Indonesia has kept the reciprocal implementation of compensating human rights limitations in mind when implementing COVID-19 measures, the full application of reciprocity in Indonesia is limited by economic considerations of a limited budget, which presents an inhibiting factor to the full implementation of reciprocity.

⁴⁶ The government has received a considerable amount of flak for failing to implement the Regional Quarantine option under Law No. 6 of 2018.

⁴⁷ Indonesia, Law concerning Health Quarantine of 2018, art. 55

⁴⁸ As of the time of this article’s writing, three provinces in Indonesia is implementing Large-Scale Social Distancing: Jakarta, West Java, and West Sumatra. Notwithstanding other regencies and cities that have independently implemented Large-Scale Social Distancing, the three provinces have populations exceeding 62 million people. If these provinces were to implement Regional Quarantines respectively, the government would be under an absolute reciprocal obligation to provide for all 62 million.

⁴⁹ Indonesia, Government Regulation on Large-Scale Social Distancing of 2020, art. 4(3)

⁵⁰ Samboh, Esther and Akhlas, Adrian Wail. (2020, April 13). Explainer: Indonesia to finance coronavirus battle mostly through debt. *The Jakarta Post*

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