



## Responsibility of States for Pandemic COVID-19: International Law Review

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### Abstract

**Introduction to The Problem:** This research focused on analyzing responsibility of States about COVID-19 pandemic. The concept of international responsibility could be interpreted as a relation between the state sovereignty in national legal mechanism, and also implementation of the principles of the international law in the other sides to fix it about internationally wrongful act. Especially how states contribution to prevent, vaccines, prosperity/ social aid, and health services for people in its states

**Purpose/Objective Study:** This research would answer the following questions: 1) How the responsibility of states about COVID-19 pandemic under international law?; 2) What is the dispute settlement mechanism for the fulfillment of international law? obligations by states?

**Design/Methodology/Approach:** This research used socio-legal studies to identify between political, economy, and law approach to understanding what states responsibility regarding COVID-19 pandemic under international law.

**Findings:** This article argued that strong relations regarding state responsibility in the face of international legal mechanisms, through international cooperation mechanisms as well as diplomatic approaches shall be prioritized, to identification regarding internationally wrongful act. Then the fulfilment of basic rights of citizens during COVID-19 pandemic such as access to health services, vaccines, and socio-economic consequences are responsible for the country. Parties that can sue the state in international liability can be from state actors and non-state actors. China as a based on Covid-19 are spread around the world are bears some international responsibility for the unquantifiable damage sustained as a direct



result of the state having failed to contain the virus, and to notify the international community of its existence. Therefore, judicial mechanisms through the UN mechanism or outside the UN Mechanism to dispute settlement mechanism.

**Paper Type:** Research Article

**Keywords:** States Responsibility; International Law; COVID-19 Pandemic

### **Introduction**

Covid-19 pandemic is a global problem, a virus that affects various aspects of life, and creates crises in most areas around the world (Liu & Chang, 2020), apart from its impact on the health sector (Lupton & Willis, 2021). COVID-19 originated at Wuhan city of China in early December 2019 has rapidly widespread with confirmed cases in almost every country across the world and has become a new global public health crisis (Luban, 2020). The pandemic has created major changes in the world's habits of daily living facing various physical jobs and their consequences for work, working and studying from home, and creating distance from family and friends (BS & Vanod, 2020).

It includes the lock-down policy that has internal consequences for the individual, society, and the country's economy. The purpose of the lockdown policy gives the signal that a country is responsible for controlling the epidemic from the country to the individual (Ostrovskaya, 2021). On the other hand, the impact of the lockdown creates a catalysis of fear, ridicule, and even discrimination on human rights for citizens, if it is not handled properly by a country, it would create social disturbances that further aggravate the Covid-19 control agenda (Hargreaves & H.Logie, 2020).

In the context of international relations. The concept of international responsibility can be interpreted as the relationship between state sovereignty in national legal mechanisms, and also the implementation of international legal principles (Orford, 2006) on the other hand to correct wrong actions internationally (Schooten & Verschuuren, 2008). Especially how the state's contribution to prevent, vaccines, prosperity/ social aid, and health services for the people of the state (Capano, Howlett, Jarvis, Ramesh, & Goyal, 2020).

The responsibility of the state deals with multiple challenges, in the internal context of how to control (testing & tracing) Covid-19 that is accompanied by public security and avoid the effects of the economic crisis (Jones & Hameiri, 2021). At the same time, external mechanisms are related to vaccine diplomacy efforts (Nhamo, 2021), opening foreign investment faucets that have been disrupted due to Covid-19, as well as other things that prevent state immunity from collapsing (Selmi, Hammoudeh, Errami, & E. Wohar, 2021).

It can be achieved because Covid-19 creates nationalism which has an impact on discrimination in carrying out international relations, unilateralism, and the global economic crisis (Obermeier, 2021). As well as how the border policy of citizens'



mobility to visit a country (Ferhani & Rushton, 2020), as well as various other problems in the context of international relations with state responsibility and the Covid-19 pandemic (Heathcote, 2021).

This research answered the following questions: (1). How the responsibility of states about COVID-19 pandemic under international law?; (2). What is the dispute settlement mechanism for the fulfillment of international law?

### **Methodology**

The research method used a socio-legal study. This research was not limited to text, but also the context deeply which included all processes, for example from 'law-making' to 'implementation of law'. The label socio-legal studies have gradually become a general term encompassing a group of disciplines that apply a social science perspective to the study of law, including sociological law, legal anthropology, legal history, psychology and law, the study of judicial political science, and comparative law (Tamanaha, 1997).

The socio-legal approach is a combination of approaches within the social sciences, including political science, economics, culture, history, anthropology, communication and many other sciences (Levinkind, 2004), which is combined with an approach known in legal science, such as learning about principles, doctrines, laws and regulations (Wiratraman & Putro, 2019). Thus, the analysis of state responsibility during the Covid-19 pandemic from the point of view of international law gets a solid answer.

### **Results and Discussion**

#### **Internationally Wrongful Act and States Responsibility Under International Law**

The concept of state responsibility departs from international legal standards and its inclusion in national law related to what is permitted and illegal, if the state does something that is not permitted then the responsibility borne by the state arises. actions that can be considered to violate international law (Domingo, 2010).

Malcolm N. Shaw mentions state responsibility in three criteria, namely: 1). The existence of an international legal obligation that applies between two or more countries; 2) There are violations/omissions that violate international law; 3) There is damage/loss of an international nature. Therefore, it is able to produce satisfactory decisions and financial compensation, and not become a prolonged international dispute (Shaw, 2008).

UN General Assembly Resolution Number 59/35 and number 52/61 on January 8, 2008 (hereinafter as UNGA Resolution 59/35), Article 2 explains regarding "There is an international wrongful act of a State when conduct consists of acts or omissions:

(a) to attribute to the state under international law; and b) to constitute a violation of the state's international obligations”.

Article 3 of the UNGA Resolution 59/35 explains “The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law”. In this context, the state gets the responsibility to be carried out under the international legal mechanism, for all actions and policies it makes (Simmons & Steinberg, 2007).

The state with its policy is obliged to ensure that dependents can be fulfilled, in health, for example, how to reduce the number of virus spreads, build community immune resilience, including in the context of allocating state income obtained from taxes or not to report on the health insurance of the rights of its citizens (Goldsmith, 2010).

During the Covid-19 period, the convergence of various factors, such as demographics, socio-economics, to technology that strongly supports government policies in overcoming the pandemic (Piepolis & Smilgevičiūtė, 2021), through the steps taken, the rate of growth, the impact of losses, to various inventions, can be carried out by the destination country in order to be able to overcome the impact of the pandemic (Teremetskyi et al., 2021). Therefore, the government can act as a catalyst in fulfilling responsibilities, while community entities can be a supporting factor for the success of policies that can be realized (Pieterse, Lim, & Khondker, 2021).

In order to explain the various problems that occur, as well as the responsibility of the state for Covid-19, it can be seen in the following table:

**Table 1.** Public policy shifts, dilemmas, and how states responsibilities are works (Basu, 2021)

<b>Stream/ Problem</b>	<b>Implication</b>	<b>State Responsibility</b>
Poverty and unemployment	The impact of the pandemic has led to poverty, the current middle class because sources of income and purchasing power have decreased, the unemployment rate is high	Making social assistance policies that are accessible to the community, providing soft assistance and access to capital for start-ups and SMEs



Social inclusion and social justice	Inequality in access to justice, legal aid, and privileges for criminals, such as criminals will lead to social distrust which has an impact on efforts to resolve legal issues with violence.	Prioritizing the principle of due process of law, providing a deterrent effect with appropriate punishment for perpetrators of crime, and restoring public confidence in impartial legal mechanisms
Equitable development	Uneven development caused by regional potential, slowing investment, and various other problems that lead to an economic recession	Making affirmative development policies for underdeveloped areas, including paying special attention to equitable development
Knowledge, resource sharing, and strategies to raise education cover or scope to deprived sections among nations	The limitations of research development, quality of education, and supporting facilities in various regions have become a serious problem during the Covid-19 pandemic.	Prioritizing and mainstreaming educational policies that are accessible, available, affordable, and acceptable to all levels of society.
Threats of dangerous defence technologies	The use of technology that raises the potential as a weapon of mass destruction that is increasing during the pandemic due to the control of resources and recognition in international politics	The state is obliged to gather international support in the context of international peace and security, and to strengthen defence equipment for self-defence
Unconventional biological health hazard	The use of Covid-19 and its derivative variants (Delta, Alpha, etc.) that mutate as biological weapons that are capable of exploding further pandemics	Research and development of defence systems are key with a scientific approach in anticipating the problems of developing biological weapons that are developing in the world
Safety issues arising out of communal problems of nations	The problem of people who do not obey to the health protocols accompanied by ineffective policies is a problem until now Covid-19 has not been completed	Making comprehensive policies and frameworks to ensure health protocols can ensure, mass prevention, and control by involving epidemiologists to ensure that herd immunity can be realized



Effective ways to control population explosion	Population explosion in a society that is not accompanied by economic progress can cause social problems and national instability. If it is not managed properly, the worst impact can be the disintegration of the nation	Creating effective policies with a persuasive approach to control the population, and manage bonuses to accelerate the development of the country, especially for countries with high population levels such as Indonesia, China, India
Climate preservation and global participation	The impact of climate change can be overcome during the Covid-19 lockdown period, but over time, the impact of climate change is increasing and causing serious problems for global ecosystems	The need for absolute compliance principles referring to the Paris Convention on climate change
Financial turbulence faced by nations	The impact of Covid-19 also affects the increase in interest rates on state debt which has an impact on the economic turbulence faced by the country, if it cannot be resolved, the country can collapse.	The need for multilateral agreements to reach agreement on solutions in solving global problems, hope for the principle of prosperity for all, economic crises and financial turbulence global can be resolved.

In this context, the state is as an authority that has a perfect personality before international law is expected to be able to take responsibility and responsibility for the various impacts arising from the Covid-19 pandemic (Caro, 2021). Through its policies that is considered to have the capability to fulfil these obligations, both in national political policies, and outside in international relations (Ahmed & Jackson, 2021).

### **Dispute Settlement Mechanism of the States Under International Law**

In international dispute resolution as dispute resolution can be done in two forms, namely, responsibility in terms of diplomatic/political dispute resolution (Manning, 2021). As well as disputes with adjudication mechanisms within the framework of international law (O'Connell, 2017). International disputes must involve complaints, litigation, disagreements, or conflicts between two parties subject to international law. It is objective (not reliant on the will or confession of the parties) and recognized by the facts, not by declarations. It can be a variety of options that can be chosen, a fair, effective, and adequate dispute resolution settlement in accordance with what is expected by the interests of the state (Barnes, 2022).

***Responsibility and Diplomacy Agenda of the States***

The mechanism of responsibility in the international legal system is a unique mechanism, where the adjudication mechanism is a last resort when non-adjudication efforts fail to be implemented (Goldberg, 2022). The mechanism must be in place so that the peaceful path can be realized. Through bilateral/multilateral agreements contained in international agreements based on the Vienna Convention in 1969. It can certainly minimize the risk of a greater international conflict with mutual agreement and mutual awareness (Linderfalk, 2007).

An example of a case that uses this method of dealing with state responsibilities can be seen in the case of *Rainbow Warrior France v New Zealand* in 1990. The arbitration followed the incident in 1985 in which French agents destroyed the vessel *Rainbow Warrior* in harbour in New Zealand (Romanis et al., 2020). The UN Secretary-General was asked to mediate and his ruling in 1986 provided for French payment to New Zealand and for the transference of two French agents to a French base in the Pacific, where they were to stay for three years and not to leave without the mutual consent of both states (Shaw, 2008).

During this Covid-19 pandemic, the mechanism can be used as a multilateral approach to create international solidarity, including determining strategies and priorities at the global and regional levels (Moon, 2019) in terms of access to medicines, strengthening security, vaccine cooperation, protection of citizens, as well as strengthening the global economy from the impact of an economic recession that has the potential to create a global economic crisis (Alhashimi, Fiallo, et.al, 2021).

It must be timely required good attitude in fulfilling obligations and reaching an agreement (Jerry, 2020). Through this policy that is hoped in order to achieve the satisfaction between the parties by adhering to the principle of *pacta sunt servanda* in accordance with Article 24 of the Vienna Convention in 1969 which states "Every agreement that applies is binding on the parties to it and must be implemented by them in good faith" (Lateef & Akinsulore, 2021). Thus, the efforts to deviate can be minimized, because the state relies on moral norms in making international agreements, both bilaterally and multilaterally (United Nations, 2012).

***Liability and Adjudication Mechanism Under International Law***

The dispute resolution through the adjudication mechanism is the right step to realize binding judicial decisions for state parties (Astriani et al., 2021). In this sense, the obligation to be achieved in this mechanism can be maintained by taking into account the obligation to maintain international peace and security as intended by the establishment of the United Nations (Klein, 2014).

Article 2 (3) and Article 2 (7) of The Charter of the UN state that: (3). All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered; (7). Nothing contained in the present Charter shall authorize the United Nations to intervene in



matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII (Tirrell & Mendenhall, 2021).

Then in Chapter VII, in particular Article 33 of the United Nations Charter, it is stated that: 1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice; (2). The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

The mechanism offered in The Charter of the UN is an indication that a peaceful mechanism can be carried out and is considered detrimental during Covid-19 (Nyahunda et al., 2021). Through the mechanism of mediation, investigation/conciliation, including officers under the UN General Assembly mechanism, it is hoped that non-judicial efforts can still be an option that would be chosen by the parties. As well as the United Nations (de Oliveira Mazzuoli, 2021) Security Council's instrument of power to ensure that it can be used and implemented to ensure international peace and security can be realized (JGMerrills, 2011).

However, the non-adjudication mechanism still fails, the state party can choose the agreed judicial mechanism, either through the International Court of Justice (ICJ)(Chaturvedi, 2020) or through the international arbitration mechanism. To bring a country considered responsible before the ICJ, based on Article 49 of the United Nations General Assembly Resolution on State Responsibilities, it is stated that: An aggrieved State can only take retaliatory action against a State responsible for an internationally wrongful act to encourage that State to comply with its obligations. (French, Saul, & White, 2010).

It is reinforced in Article 52(3)(a) of the ICJ Statute which states that the settlement must be carried out by agreement between countries, by complying with the principles of international law by fulfilling the principle of *erga omnes*, so that the state can fulfil its legal responsibilities and comply before international legal mechanisms (Urs, 2021).

Countries can also determine through an international arbitration mechanism, either under the Permanent Court of Arbitration (PCA) or International ad hoc Arbitration, which is more flexible, with the principle of agreement of the parties to determine the Arbitrator, the timing of the trial, to the technical and financing mechanisms (Quintana & Uriburu, 2020). Therefore, the freedom to choose international legal mechanisms, one of which is through arbitration (Tanaka, 2018). To identify the differences between international arbitration and ICJ can refer to the following table:





**Table 2.** Differences between arbitration and judicial settlement (Tanaka, 2018)

Organ	Arbitration	Judicial Settlement (ICJ)
Organ	Ad hoc	Permanent
Judges	Selected by the parties in dispute	Pre-Determined
Applicable Law	Rules adopted by the parties	International law
Procedure	Determined by the parties	Established by the courts (ICJ Statute)
Submission of Disputes	Consent of the parties	Consent of the parties
Publicity	May be secret	Public
Outcome	Binding upon the parties	Binding upon the parties

In the settlement of Covid-19 cases that can cause international disputes between countries that are detrimental both in the context of health (pandemic), as well as from an economic and international law point of view. Countries can use the adjudication efforts provided under the international legal framework (Prakasa, 2021).

Through the framework of the International Health Regulations (IHR), all over the world can determine the mechanism of legal accountability for pandemics that occur under the arrangement of WHO as a world health organization under the United Nations to detect the spread of the Covid-19 pandemic (Knox & Tzouvala, 2021), access and report on the health sector, and policies in the health sector. the health sector in terms of handling and the dangers of spreading Covid-19 (Hastings, Fadiman, & Gordon, 2019).

### Conclusion

This article argued that strong relations regarding state responsibility in the face of international legal mechanisms, through international cooperation mechanisms as well as diplomatic approaches shall be prioritized, to identification regarding internationally wrongful act. Then the fulfilment of basic rights of citizens during COVID-19 pandemic such as access to health services, vaccines, and socio-economic consequences are responsible for the country.

Parties that can sue the state in international liability can be from state actors and non-state actors. China as a based on Covid-19 are spread around the world are bears some international responsibility for the unquantifiable damage sustained as a direct result of the state having failed to contain the virus, and to notify the international community of its existence. Therefore, judicial mechanisms through the UN mechanism or outside the UN Mechanism to dispute settlement mechanism.

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