



Research Article

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Received: 25 January 2021 / Accepted: 29 April 2021 / Published: 8 July 2021

COVID-19 as a National Security Issue in Malaysia: A Comparison with the Italian and Australian Perspectives

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DOI: <https://doi.org/10.36941/ajis-2021-0115>

Abstract

COVID-19 pandemic affects variations of countries' national strategies, policies, and plans of actions while at the same time these arrangements afflicting their residents by implementing a variety of health and legal measures to flatten the COVID-19 curve. This stretches from prohibiting overseas travel, forbidding interstate travel, encouraging work from home closings of some public areas, compulsory wearing of masks and hand sanitisers, quarantine, social distancing, and a mixture of various actions. Malaysia in implementing its laws and regulations on COVID-19 is empowered mainly by the Prevention and Control of Infectious Diseases Act 1988 (Act 342) together with its newly imposed COVID-19 regulations and the old Police Act 1967 (Act 344). The movement control order coupled with the social distancing measures has appeared to be the effective actions in flattening the COVID-19 curve. The study attempts to map COVID-19 as a national security matter for the benefit of public health and national security concurrently within the scope and limits of Malaysia's public health measures and prevention of diseases, in the protection of security and public order. This paper then proposed for COVID-19 and other future health crises or pandemics as national security issues. This in turn legitimising the health, security, or emergency measures, either developing on the existing laws or moving towards a more practical form of law in line with future unforeseeable threat and intervention. The Australian and Italian laws relating to COVID-19 are analysed to provide better insight and suggest solutions enabling countries facing a future emergency or crisis issues.

Keywords: COVID-19, national security, Malaysia, emergency law

1. Introduction

National security terminology scope is wide and could range from safety to politics, economics, and social aspects. Probably not even in our remotest mind that we would be combatting a pandemic at the worldwide level to the degree of inducing public health and later national security subjects that will stop or control the public freedom of movement and even closings of states' border. Therefore,

the purpose of this article to examine the importance of charting COVID-19, a grave public health topic as a national security problem. This is proposed with a view for improved rule and effective measures of flattening the COVID-19 curve.

1.1 What constitutes national security?

Before proceeding with the explanation on the position of national security in Malaysia, it is essential here to refine precisely what is intended by the scopes of national security which inclusive of military and non-military ideas. The former comprises collective and global security as well as international law, whereas the latter covers political, economic, energy, homeland, human, environmental security, and cybersecurity (Holmes, 2014). Because of the COVID-19 pandemic, thus it is possibly reasonable to observe that this virus that threatens public health topics, which in shot could distress all the abovenamed dimensions of national security. Katz and Singer (2007) emphasizes that a pandemic qualifies as a 'security concern' when it leads to destabilisation or disruption of social order, politics, and economy. National Academies Press (2017) perceives national security to be not only protection from state and non-state actors, but also include protection from widespread diseases and other health outcomes that adversely affects a nation's economic vitality and lifestyle. Evans (2010) thinks that modern emerging diseases and pandemics perhaps pose a greater national security threat, as a disease could spread more rapidly in recent times compared to the previous eras.

1.2 COVID-19 as a national security issue

The next issue is the positioning of national security within the Malaysian legal parameter in the Federal Constitution as the highest form of law in the country. Although the clear characterisation of what constitutes national security is nowhere to be originated in the Malaysian Federal Constitution, the nearest is item 3 on internal security that includes public order and item 14 on medicine and health in the Ninth Schedule of the Federal Legislative List. This means that subjects of Malaysian internal security also health-related matters are within the Federal laws which consequently guaranteeing its legitimacy.

1.3 Malaysian National Security Policy 2013

As Malaysia upholds its own National Security Policy (NSP), it is significant then to narrate the countless security issues that led to the launch of the National Security Policy in 2013. The NSP highlights the necessity to preserve its sovereignty, national security, and public order, take cognisance of both international threats and geopolitical climate at the regional and international level namely as follows: national unity, nation's democratic system, illegal immigrants and refugees, territorial claims, extremism and terrorism, cybersecurity, disasters, crises, transnational crime, pandemics and infectious diseases, energy security, food security, and nuclear arms. Therefore, in these reputes, pandemics and infectious diseases now facing COVID-19, are viewed as national security issues.

Malaysia had proceeded speedily in battling COVID-19 and the pandemic currently is under control. Actions in movement restrictions, as well as economic initiatives, have been implemented to curtail the bearing on the survival of Malaysians (Yeoh and Qarirah, 2020). The increased number of COVID-19 cases encouraged the Movement Control Order (MCO) to flatten the infection curve countrywide (Anand, 2021).

Prevention and Control of Infectious Diseases Act 1988 (Act 342) is the main Act of Parliament to restraint the pandemic through innumerable measures. Under the recently amended Section 25 of Act 342 imposes the penalty of imprisonment and/or fines up to RM10,000 upon individuals who do not comply with the rule of compulsory wearing of face masks in public places. As for body corporate, the punishable fine is up to RM50,000. The *Police Act 1967 (Act 344)* stipulates for the organisation,

discipline, powers, duties of the Royal Malaysian Police that authorise the practice of police force during the implementation of MCO especially that bans interstate travel. The *National Security Council Act (NSC) 2016 (Act 776)* provides for the declaration of security areas with special powers which was executed during MCO of COVID-19. NSC's role inter alia is to articulate policies and strategies measures on national security containing sovereignty, territorial integrity, defence, socio-political stability, economic stability, strategic resources, national unity, and added interests connected to national security (Section 4(a)). The COVID-19 as a pandemic or infectious disease issue appears to be 'other interest related to national security even though not clearly spelled out in Act 776. The employment of policies and strategies is being scrutinised by NSC (Section 4(b)). As part of control measures, NSC enforces, inter alia, the quarantine measures of days for those coming back to Malaysia.

1.4 COVID-19 within the constitutional law and the emergency powers

Malaysia is an exceptional (Milner, 2012; A Johnson and Milner, 2005) country as nine hereditary Rulers in the Malaysian federation are Heads of their respective States (Kedah, Kelantan, Terengganu, Pahang, Johor, Selangor, Perak, Negeri Sembilan, and Perlis) (Bari, 2007) within the federation. Any of these Rulers can be elected by the others to be the Yang di-Pertuan Agong (YDPA) or the King through the Conference of Rulers (COR) (The Malaysian Federal Constitution, Arts 32(3), 38(2)(a) and 38(6)(a)). Malaysia applies parliamentary democracy with constitutional monarchy ("The Official Portal of Parliament of Malaysia") and the YDPA as the Supreme Head of State of the Malaysian Federation (Article 32(1)). As the supreme Head of the Malaysian Federation and a constitutional monarch, the Federal Constitution expressly provides the YDPA with certain supremacies whereby His Majesty must act on advice (Arts 43(2)(b) and 145(1)) or act based on his discretion Arts 40(2)(a), (b) and (c)). However, there are still powers bestowed upon the YDPA under the Federal Constitution (among others, to prorogue or dissolve Parliament and to exercise his roles as the Supreme Commander of the Armed Forces), which neither explicitly remark the YDPA to act on advice nor his discretion (Arts 55(2) and 41). Furthermore, the Malaysian Court of Appeal in *Armed Forces Council, Malaysia & Anor v Major Fadzil Bin Arshad* [2012] 1 MLJ 313 (CA) at para 38 of the judgment dissenting held that "[a]s the Supreme Commander of the armed forces, His Majesty's role could not have been intended by the framers of our Constitution to be merely symbolic or just a figure [H]ead. Surely His Majesty is expected to play an effective and meaningful role as the Supreme Commander". These authorities could be contended to have conferred the YDPA with prerogative (Harding, 1986; Hickling, 1976) powers, such as the proclamation of emergency (Article 150).

Article 150(1) of the Federal Constitution specifies that:

if the Yang di-Pertuan Agong is satisfied that a grave emergency exists whereby the security, or the economic life, or public order in the Federation or any part thereof is threatened, he may issue a Proclamation of Emergency making therein a declaration to that effect.

Based on the above-stated provision, the YDPA may proclaim an emergency if the test of "grave emergency" either to the security, the economic life, or public order in the Federation or any part thereof have been "threatened". Since COVID-19 has been considered as a pandemic, not only by the Malaysian Government, ("Situasi Semasa Pandemik COVID-19 Di Malaysia", 2020) but similarly by the World Health Organisation (WHO) ("Coronavirus Disease (COVID-19) Pandemic", 2020), COVID-19 pandemic satisfied the "grave emergency" test which could result in an emergency to be declared or proclaimed by the YDPA as specified under Article 150 of the Federal Constitution.

2. Research Design and Methodology

This paper considers how the national governments view COVID-19 being a national security matter.

In most instances, the health-related pandemic is not considered a national security issue. Laws, regulations, and policies published by the governments are generally do not see public health as a security matter, despite the possibility of announcing an emergency in the wake of a global pandemic. This paper employed a qualitative method in which doctrinal and comparative analyses of national laws and policies relating to COVID-19 in Australia, Italy, and Malaysia are compared. In examining this, a significant amount and quality of data were derived from the Constitutions and statutes, policy documents, books, journals, magazines, and newspapers. Using content analysis, the data was used to understand the coverage and limits of the current regulatory provisions addressing COVID-19, and the connection to public health law to national security law.

3. Analysis

In a pandemic situation such as the COVID-19, countries vary in their approaches to curb the disease. In Malaysia, under its Federal Constitution of Article 150(1), the King or YDPA has the power to proclaim an emergency. The COVID-19 pandemic fulfilled the criteria of a “grave emergency” test when the spread has been out of control, causing disruption not only economically but socially and even politically. As the most prevailing law of the country, the Federal Legislative List does address pandemics as part of national security. The three Acts of 342, 344, and 776 supplement measures and policies where penalties in the event of non-compliance can be in the form of imprisonment and/or fine, the power of the Royal Malaysia Police, and the National Security Council in executing the MCO. Parliamentary democracy with a constitutional monarchy system places the YDPA as the Supreme Head of the Federation. Hence, all laws ought to be in line with the proclamation of emergency of the YDPA.

Despite the variety of laws and regulations, Malaysia needs to practice fair and just application of the law, particularly when striking a balance between restricting the right to freedom of movement and permitting the right to justified movement of individuals. While Malaysia and Italy have implemented the proclamation of emergency, Australia executed its measures under their biosecurity laws.

The difference between emergency and biosecurity laws is the different approaches adopted in governing those respective areas. Emergency focuses on the various public health measures such as quarantine, declaration of infectious areas, and the movement control order, whereas the biosecurity law prepares the biosecurity risks with the necessary actions to cater to the respective degree of risk. The public health measure is associated with health protection, precisely health measures that reduce impact and increase resistance to critical threats such as emerging infectious diseases and other health risks. Biosecurity measures prevent the spread or introduction of harmful organisms to human, animal, and plant life.

Irrespective of the implemented approaches, all countries ought to observe the rule of law in dealing with Covid-19. The Siracusa Principles, created in 1985 at the United Nations, place importance in upholding the rule of law. Among the essential principles of Siracusa are first, adherence to the law and the protection of the general interest.

In addressing the issue of COVID-19, this paper suggested that the Australian approach has been more specific in their biosecurity measures, leading to specific plans of execution and control to manage the pandemic better. Biosecurity laws are one aspect that other jurisdictions such as Malaysia and Italy could take as an example of “the way forward” with future pandemics.

4. Findings

In Malaysia, unequal treatment occurred between a very important person (VIP) and ordinary citizens at the onset of the pandemic (Hassan, 2020). The VIP was fined after public pressure but was not pressed with any charge for breaching the mandatory home quarantine under Section 15(1) of Act 342. The ordinary citizens have suffered heavier penalties. Questions of discrimination arose, which

was relatable to adherence to the law by all citizens under the first Siracusa Principle. As of 3 March 2021, an amendment to the law increased the fine to RM10,000 upon individuals for failure to wear face masks in public. Previously, the fine was only RM1,000 per individual, and beginning 11 March 2021, the stringent implementation of RM10,000 has been effective.

The proclamation of emergency by March 2021 reinforced measures taken for the past 12 months of the pandemic. However, the concept of the rule of law is essential, particularly in the implementation of movement restrictions and preventative measures during the pandemic. Simultaneously, most citizens have been obliging to the movement control order, but there are cases of non-compliance by a minority of offenders. Malaysia has been struggling with compliance by such minority groups, but the impact is significant when clusters of cases emerged from most states. Hence, essential amendments took place, and from 11 March 2021 onwards, citizens were being imposed with a stringent penalty of RM10,000 for not wearing their face masks in public areas.

Italy too has been proclaiming for an emergency, although movement control was difficult under their Code. On the other hand, Australia has experienced the highs and lows of infected cases but benefits from its biosecurity measures that are efficient in creating necessary plans of action for the pandemic. This was evident on 18 March 2020 when Australia proclaimed COVID-19 as a human biosecurity emergency, consistent with the World Health Organisation's Director-General statement on COVID-19 as a global pandemic (WHO, 2020). Various regulatory actions could then be implemented in response to the pandemic under the Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential Declaration 2020).

5. Discussion

From the examination of the Malaysian acts and regulations, it is proposed that the measures by NSC were national security measures through authorisation by the public health laws under Act 342. The infected and suspects offences were enforced in agreement with Act 342. Thus, it can be carefully concluded that public health issues harmonise with national security to offer better regulations.

5.1 Rule of Law and Covid-19 Pandemic

According to the United Nations Report of the Secretary-General (2004), rule of law could be defined as "a principle of governance in which all persons, institutions, and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency".

The question is, why is the rule of law so significant in tackling the COVID-19 pandemic? The pandemic has amplified and exploited fragilities across the globe (OCED, 2019). As rule of law is an enabler of good governance and a pre-requisite to security, justice, and equality, it becomes vital to promote rule of law when a country focuses on the needs of people and the institutions and norms regulating relations between States and individuals (UN Security Council, 2004).

Among the two fundamental elements of rule of law are legal certainty and foreseeability (Venice Commission of the Council of Europe, 2016). When there is a rule of law, it defends human rights' standards, and an independent judiciary, as well as protects procedural rights by guaranteeing legal certainty, due process, and predictability for the benefit of everyone.

Beagle (2020) stated that confirming observance to the rule of law by the International Development Law Organization (IDLO) implicates three foundations:

- 1) The fortification of the legal and policy framework in dealing with COVID-19 responses and recovery.

- 2) The relief of COVID-19 impact on justice systems and justice seekers by focusing on vulnerable groups (women, girls, vulnerable groups), with no one left behind.
- 3) The provision of support and investment in a culture of justice to protect the rights and dignity of people.

Notwithstanding the unforgiving penalties, adherence to the rules by Malaysians is crucial in averting possible waves of the pandemic. Several VIPs were reported to be moving around (Malaysiakini, 2020), visiting others, and hosting large gatherings. A VIP recently failed to observe home quarantine after returning from a high-risk country (Yeoh and Qarirah, 2020). Nonetheless, these violations were subjected to fines only and no charge was made by the Attorney General's Chambers due to insufficient evidence on the breach of the mandatory home quarantine under Section 15(1) of the Act 342 (Yatim, 2020). The ordinary citizens have suffered heavier penalties and the glaring case involving the VIP failing to comply with the 14-day quarantine had to be impacted with public pressure for the VIP to be only fined RM1,000 (Kathirasan, 2020). Such incidence creates perceptions of double standards whereas everyone is equal before the law and hence it is essential to uphold the rule of law since no limitations should be dismissed or taken lightly (Yeoh & Qarirah, 2020).

In terms of global target, rule of law is part of the Sustainable Development Goals (SDGs). Since 2015, the SDGs have been adopted by all United Nations Member States as a global call to eliminate poverty, protect the planet and ensure everyone enjoy peace and prosperity by 2030 (UNDP, 2020). This is in line with SDG-16 of "promoting peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels". On Target 16.3 of SDG-16, it is stated that "promoting the rule of law at the national and international levels and ensure equal access to justice for all". Since COVID-19 has obstructed socio-economic and human rights crises, the aggravation of inequality undermines gains, public trust, and confidence in institutions (IDLO Policy Brief, 2020).

Strengthening the implementation of rule of law is crucial. According to the World Justice Project Rule of Law Index (WJP) 2020, eight factors that affect the development of rule of law: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice. Of 128 countries analysed under the WJP, Malaysia stands at rank 47 globally with a score of 0.58 out of 1 (1 signifying strong adherence to the rule of law).

In the realm of public health, rule of law-based legal frameworks permits health emergency measures that are in line with *International Health Regulations (2005)*, *Universal Declaration of Human Rights*, and the *International Covenants on Civil and Political Rights (ICCPR)*, and *Economic, Social, and Cultural Rights (ICESCR)* (IDLO Policy Brief, 2020). Restrictions, however, need to be clearly defined under the national law without ambiguity or misinterpretation by the authorities, avoiding arbitrary or excessive use of power (IDLO Policy Brief, 2020). This also means that should there be a violation of rights, adherence to the rule of law allows individuals to challenge those violations and obtain redress via an independent judiciary (IDLO Policy Brief, 2020).

Specifically, when emergency laws are employed to restrict human rights, such restriction must be proportionate to a pressing public or social need and in pursuance of a legitimate aim. Emergency laws must be stretched in a definite manner and to be used no more than what is required when using restrictive measures.

5.2 The Siracusa Principles

COVID-19 is not an unanticipated crisis. Back in 2011, the World Health Assemblies quoted a report of 2005 that the world has been ill-prepared when comes to battling pandemic at a global scale (Implementation of the International Health Regulation, 2005).

When the world has been ill-prepared, the fundamental rights of the people must be upheld despite a public emergency that is life-threatening (AAICJ, 1985) such as COVID-19. The Siracusa

Principles are pertinent principles established in 1984 in achieving effective implementation of the rule of law under the *International Covenant on Civil and Political Rights* (ICCPR) (United Nations on Economic and Social Council, 1985). “Public health” under the ICCPR is one of the grounds for a State to invoke restraint certain rights when combating diseases that are population-threatening (United Nations on Economic and Social Council, 1985).

In designing necessary protections that might affect fundamental rights, the World Health Organization (WHO) summarised the *Syracusa Principles*, to be complied within a certain duration and subject to review and appeal, to set limitations on fundamental rights for:

- Adherence to the law.
- Protection of a legitimate objective of general interest.
- A necessity in a democratic society to achieve the objective.
- Fulfillment of similar objectives where there are no less intrusive and restrictive means available.
- Compliance with scientific evidence without arbitrary, unreasonable, or discriminatory limitations on those fundamental rights.

5.3 COVID-19 and Malaysia national security

As a national security issue, any measures concerning COVID-19 must be consistent with the extent of the legal power and authority of declaring a state of emergency. Lessons from the practices of public health measures exercised in Australia and Italy as crisis management of national security/biosecurity issues serve as a model regulation in dealing with infectious diseases in times of health emergency. Both jurisdictions employ two different legislative responses to COVID-19. Australia utilises the existing biosecurity laws to address possible sources of threats posed by the pandemic to public health and the environment. Italy, on the other hand, introduces a specific law as temporary legislation. In this regard, commonalities and differences of the legislative and regulatory responses will be examined concerning the inclusionary and exclusionary categories of matters subject to the scope of the legal power and authority permitted by the scope and applications of the respective laws.

5.4 Australia

Australia is an exquisite example of a jurisdiction having comprehensive biosecurity law to deal with the COVID-19 pandemic. At the time when the *Biosecurity Act 2015* was introduced, the primary purpose of the law is to manage biosecurity risk to human health and the environment arising out from human, animal, or plant. The unprecedented crisis of COVID-19 calls for the contingent measure to contain the spread of the pandemic outbreak, particularly the preventive measure of confining the movement of people including a person under investigation, as well as communal and commercial activities.

Under section 51 of the Act 2015, the Commonwealth, state, and territory biosecurity officers are authorised to issue required biosecurity orders concerning a person who is suspected of having infectious human disease within Australian territory. Such measures may be pursued against specified classes of persons by way of prohibiting or prescribing certain behaviour or practice, such as furnishing reports, records, or tests on specified goods relating to the suspected disease. The list of human diseases declared in the *Biosecurity (Listed Human Diseases) Determination 2016* is non-exhaustive. Hence, it can always be added subject to the approval of the Director of Human Biosecurity cum Australia’s Chief Medical Officer. Regarding the listing, Section 42(1) *Biosecurity (Listed Human Diseases) Amendment Determination 2020* has included COVID-19 or human coronavirus with pandemic potential under paragraph (h) to the Schedule 1 of the *Biosecurity Act 2015*.

The listing of coronavirus as human diseases under the instrument is to enable the state and federal health authorities to impose enhanced border control measures. For example, under Section 44 of the *Biosecurity Act* and S.6 of the *Biosecurity (Entry Requirements) Determination 2016* individuals incoming on conveyance or vessels subject to biosecurity control must undergo screening to determine if they have been diagnosed for having symptoms, infection, or exposure to a listed human disease.

Major measures encapsulated in the Declaration comprise bans on certain overseas travel and restrictions on cruise ships from entering an Australian port. Where a person intentionally engages in conduct that violates a direction or requirement under the Declaration, he or she may be liable for imprisonment up to five years and/ or a fine of up to AUD 63,000. In times of escalating cases of COVID-19 across the Australian territory, the power granted under the *Biosecurity Act* is read conjunctively with the *Biosecurity (Entry Requirements) Determination 2016*.

In the situation of emergency, the power to declare a biosecurity emergency is vested in the Governor-General. According to Section 475 of the *Biosecurity Act 2015*, the Governor-General may grant the Minister for Health broad power to issue direction and determine requirements necessary to prevent or control the entry of, emergence, establishment, or spread of any emergency threat. On 18 March 2020, Australia proclaimed Covid-19 as a human biosecurity emergency, consistent with the WHO's Director-General statement on COVID-19 as a global pandemic (WHO, 2020). In carrying out the power, the Ministry can implement a myriad of possible regulatory actions in response to the pandemic under the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential Declaration 2020)*. The Declaration lays down three requirements that the disease becomes infectious when it has entered Australian territory, fatal in some cases and there was no vaccine against, or antiviral treatment for, immediately before the commencement of this Declaration, and the disease poses a grave threat to human health to the nation.

5.5 Italy

Italy is one of the nation's enormously hit by the global pandemic, particularly in the first wave of COVID-19 between March and May 2020 (Alicandro et al, 2020). The government proclaimed the state of emergency under Legislative Decree 1/2018 (Civil Protection Code). Under Article 7 of the Code, COVID-19 qualifies as a matter of emergency since it is considering a matter:

.... of national importance connected with natural origin or man-made disasters which, because of their intensity or extension, must, with immediate intervention, be faced with extraordinary means and powers to be employed during limited and predefined periods under Art. 24.

Although there is a limitation of duration from 12 months and up to another 12 months extension, Article 24 allows the government to exercise fettered discretion to determine the emergency period whenever it thinks necessary for protecting public health. During the period, the government needs to determine the affected territory by looking at the condition and implications of the human disease. Article 25 allows the government to issue civil protection orders that remain subject to the parameters and method consistent with the emergency resolution and general requirements of the national and European Union laws.

The Code is silent about the control of freedom and right because of national emergency. According to the basic structure of the Italian constitution, any restriction cannot be imposed except with the laws having the force of laws. To ensure consistency of the government act with the Constitution, Decree-Law N.6 was passed on 23 February 2020. The Decree authorises the relevant competent authorities to take 'appropriate restrictive measures' to contain the fast-spreading pandemic (Deloitte, 2020).

5.6 A comparison of COVID-19 regulations: Malaysia, Australia, and Italy

A comparison of legislative measures adopted in Malaysia, Australia, and Italy revealed that public health actions may vary significantly from countries. The applicable laws represent the different scope of public health on restricting the movement of people and related activities and human rights aspects as encapsulated in most national constitutions. In Malaysia, the recourse to the *Prevention and Control of Infectious Diseases Act 1988*, and the introduction of additional ministerial regulations and directives specifically addressing Covid has been useful to control the movement of people, particularly for interstate or overseas travel, work travel, and or any other essential movement. Malaysia did not proclaim an emergency nationwide until 12th January 2021 based on the available provision under the Malaysian Federal Constitution. Rather, previously the emergency declaration is pronounced in some districts in Sabah (one of the states within Malaysia) to legitimise its action in postponing the by-state local election in the wake of rising positive cases of COVID-19 resulting from mass gathering. The Italian Code seems to be silent on the control of movement and right but proclaiming its emergency laws on COVID-19.

Australia undertakes a bolder different move to declare a biosecurity emergency in line with WHO's declaration of a pandemic. The difference between these public health and biosecurity laws is the different approaches adopted in governing those respective areas. On the one hand, public health focuses on the various public health measures such as quarantine, declaration of infectious areas, and perhaps enhanced with regulations to restrict people's movement to prevent the spread of disease. On the other hand, biosecurity laws prepare the biosecurity risks with the necessary plans of action to cater to the respective degree of risk. The public health measure is associated with health protection, specifically health measures that reduce impact and increase resistance to critical threats such as emerging infectious diseases and other health risks. Biosecurity measures are brought to prevent the spread or introduction of detrimental organisms to human, animal, and plant life.

5.7 Recommendations

Having discussed all the above current legal scenarios during COVID-19, possibly the scope of public health or pandemic-related laws should be broadened in the sense that it should incorporate to include a virus, food, animals, humans, plants, etc. Act 342 is perhaps a longstanding type of law perhaps more appropriate to animals interrelated pandemic rather than human as can be seen from the case of Japanese Encephalitis of pig virus infection in Bukit Pelanduk particularly. Biosecurity law in the form of risk management should be introduced (Osman, 2020) as in Australia to protect the population alongside the usage of the related biological and biochemical substances. As for now the biosecurity laws and regulations seems valid to animals only to prevent infection among animals in Malaysia. Apart from the command-and-control approach of laws and regulations, a mixture of governance with a risk assessment and management such as Health Protocol, as smart regulation type of governance, at the national level should be introduced rather than responsive and dependent on the international organisations such as WHO. However, it is indisputable that international collaboration and surveillance for a public health-related pandemic will work better for the population. The emergency measures by the Italian government are required however as there is no forceful restriction of people's movement, the measures seem ineffective to curb the pandemic. In other states however whilst "the limitation" may be the most used mechanism, the derogation of rights maybe justified in cases when the protection of life and health of the individuals in emergencies cannot be achieved in any way through restrictive measures (Rusi et.al, 2020).

6. Conclusion

In conclusion, it is anticipated that more characterised and enhanced laws, rather than emergency law or a combination of strict measures and administration would better cater to the pandemic. The

transforming futuristic risks should lead the way for a vigorous type of laws such as biosecurity law, while underlining the position of national security with threats to be recognised and policies and actions to be executed, at the same time respecting rule of law.

The various existing rules and regulations should evolve in line with technology development and emerging risks associated with them. Whilst these laws could affect fundamental liberties, however, in times of pandemic and crisis, compromise is perhaps needed to protect human health and the environment. It is submitted that whilst emergency laws at times are needed to combat the pandemic, the pertinent issues at hand are the regulatory approach, the breadth, and the depth of the law. Regardless of whether public health law enforcement is through emergency law or biosecurity methods, authorities must implement the rule of law without fear or favour. The rigidity of the laws will restrict the government's flexibility, public health practitioners, and law enforcers to implement the public health and legal measures. The flexible approach will enable the intended measures to cater to the degree of risks associated with them, which falls under the category of regulatory risk-type laws and enforcement. Following a standard operating procedure at times perhaps could be acceptable. However, the standard operating procedures must consider the different levels of risks exposed, which needed a different procedural standard, the aims to prevent the spread of COVID-19 might not be effectively achieved. For instance, a country that does not impose the quarantine measures, which might be effective measures to prevent the spread of the virus to the population after a person returns from a mass gathering, could open future virus spread possibilities coupled with other factors such as age and health status. Perhaps consistency and future improved solutions and measures to be translated into national laws are needed together with broader international cooperation to flatten the COVID-19 curve. The basis of the mapping of COVID-19 as a national security issue is in line with WHO declaration of a global pandemic. It then enables the countries to legislate and enforce their national laws either in the form of public health laws, emergency laws, and biosecurity laws, simultaneously addressing the severity and urgency of the pandemic for the protection of human health.

7. Acknowledgement

This research was supported by COVID-19 Research grant by Universiti Sains Islam Malaysia 2020 (PPPI/COVID19_0120/FSU/051000/15620). We would like to thank the university and the reviewers on the grant and comments.

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