

# One Year After the Pandemic in Indonesia: From Health Crisis to the Crisis of Constitutional Democracy

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2021-03-15T09:00:28

It has been a year since the first Covid-19 case was confirmed in Indonesia, in early March 2020. At that time, the Indonesian government underestimated the dangers of Covid-19, which proved fatal since the virus continued to spread gradually to all Indonesian provinces within a month. At the time of writing, Indonesia is the country with the highest number of positive cases in Southeast Asia with [1,419,455](#), even the Covid-19 death rate in Indonesia is among [the highest in the world](#).

To deal with the spread of Covid-19, Indonesia's President Joko 'Jokowi' Widodo declared a [health emergency status](#) in March 2020 based on Law No. 6 of 2018 on Health Quarantine ([Health Quarantine Law](#)). This status has given the Jokowi administration the authority to limit people's right to movement, restrict social and religious activities, and even perform a partial lockdown in particular areas. The activation of the health emergency status initially brought hope to the people, because when this status was proclaimed, many Indonesians demanded the government to impose a [lockdown](#), especially in Jakarta, the Indonesian capital, which at that time became the focal point of the coronavirus spread in Indonesia.

However, the demand for a lockdown was rejected by the Jokowi government. Instead, the government chose to implement a [large-scale social restriction](#) (*Pembatasan Sosial Berskala Besar*) policy in Jakarta, allowing people to carry out social activities such as working or doing religious prayer in the mosque with certain limitations. This non-lockdown policy also still permitted Jakarta residents to travel to other Indonesian regions.

As a result, one month after the first positive case in Jakarta, Covid-19 had spread to all 34 provinces of Indonesia. The decision not to impose a lockdown on Jakarta as early as possible was influenced by the government's view that the implementation of a lockdown could harm the Indonesian economy. Importantly, the government believed that it did not have sufficient resources to meet the requirement in the Health Quarantine Law which obliges the government to fulfil the basic needs of the people and the livestock during the lockdown.

The government's decision which emphasises the [economic concerns rather than the health interest](#) of the people has contributed to the significant increase of positive cases in Indonesia. For now, it seems fair to say that Indonesia is in a 'do or die' situation because the increasing number of positive cases has almost collapsed the [health system](#). In fact, it is not uncommon to find that in the two most populous islands of Indonesia, Java and Bali, hospitals often refuse to treat Covid-19 patients due to their insufficient capacity, leaving many untreated Covid-19 patients to die.

The crisis in the health system has also battered the Indonesian economy. This shows the Indonesian government's miscalculation when choosing a strategy to deal with the pandemic. Apart from the health crisis, this pandemic also brought another crisis to Indonesia that is no less dangerous, the crisis of constitutional democracy.

## Democratic Deconsolidation

At first, the government's handling of the Covid-19 pandemic by activating the health emergency status in the Health Emergency Law did not seem to create any danger for Indonesian democracy. Because this status is not included in the category of state of emergency mechanisms in Article 12 of the Indonesian 1945 Constitution, it was based on Article 28H of the 1945 Constitution, which guarantees the right to health. So even though this status has authorised the government to limit social activities to some degree in the society, [it did not cause the suspension of the House of Representative and other state institutions such as the Constitutional Court and the Supreme Court, nor did it allow the government to limit freedom of speech and the flow of information in the public sphere.](#)

However, in reality, the status that seems harmless is often used by the Jokowi administration to undermine democracy. One example could be seen in the action of Jokowi's government through its Police Chief who established a regulation that empowers the police to prosecute acts defaming the President's or government officials' ability to handle the coronavirus (Telegram Letter number ST/1100/IV/HUK.7.1/2020).

Such an action blatantly violates the [decision of the Indonesian Constitutional Court](#) which held that the existence of a law that prohibits people from defaming the President is contrary to Article 28 of the Indonesian 1945 Constitution which guarantees the right to free speech. As mentioned in [our previous post](#), the establishment of this regulation did not have any legal basis in the health emergency status, since this status did not allow the government to restrict the freedom of speech.

In addition to restricting freedom of expression, the Jokowi government's attempts to weaken democracy were also carried out by promulgating several controversial laws during the pandemic such as the Omnibus Law on Job Creation or the Revision of the Indonesian Constitutional Court Law. These laws which contain some controversial issues were formulated by [the Jokowi government and the House of Representatives behind closed doors, and in a very quick deliberation process](#), even the deliberation process of the Revision of the Indonesian Constitutional Court Law was conducted in just [two working days](#). When many members of the general public, especially university students and labourers, protested against the enactment of these controversial Laws by staging a demonstration, the Jokowi administration used the pandemic as an excuse to repress the protest by [detaining more than 800 protesters](#), claiming that such measures were necessary under the health emergency status to prevent the spread of coronavirus.

Another action of the government that could put Indonesian democracy in jeopardy was its decision to involve [the military](#) in handling the Covid-19 pandemic. Since the beginning of the coronavirus outbreak, President Jokowi has placed a number of military officers in key institutions that determine the policies in the fight against the pandemic. As a leader of a low quality democracy with the legacy of military dictatorship, he seems to be unconcerned about the military's involvement in civil governance. Once again, such a move did not have any legal basis in the health emergency status, due to the nature of this status that was meant to prioritise health concerns rather than security considerations.

## **Weakening Rights Protection**

In addition to undermining democracy, the Jokowi administration seems to have taken advantage of the uncertainty and less robust supervision of law enforcement brought by the pandemic to further restrict fundamental rights. The draconian Information and Electronic Transaction Law (the ITE Law) remains a powerful tool to silence dissenters since it contains several ambiguous criminal provisions vis-à-vis hate speech and fomenting violence. For instance, Rasio Patra, an Indonesian researcher who [has severely criticised](#) the Indonesian government's strategies in containing the Covid-19 pandemic, was arrested for two days under the ITE Law for allegedly broadcasting a provocative message that incites hate and violence.

What is strikingly scary about [the Patra case](#) is that just a couple of hours before his arrest on 22 April, his WhatsApp account had been hacked by intruders to send out messages with the aim of instigating public disorder in the capital. Patra said that he had never sent any WhatsApp messages to random strangers to organise riots and civil commotion. Moreover, he likened his arrest to kidnapping because the men that came to detain him at midnight neither wore uniform nor showed police identification. In any event, the Patra case could have been a deliberate attempt to silence critics, with all the necessary steps taken to cast Mr Patra as an agitator whose only aim is to bring about anarchy.

During the pandemic, the state of academic freedom also worsened. In late May 2020, several law students from Gadjah Mada University who organised a webinar event to discuss the possibility of presidential impeachment during the Covid-19 crisis due to the [failure of the Jokowi government](#) to handle the spread of the pandemic [received death threats](#) through phone calls and WhatsApp messages. Similar death threats were issued against a constitutional law professor who was invited to speak at the event. The intruders even went so far as to cancel the event by hacking the students' WhatsApp accounts and using them to tell the participants the event was called off. A rather similar hacking incident also befell Pandu Riono, an Indonesian professor of epidemiology, whose Twitter account was also hacked by intruders to post tweets and photos to damage his reputation. The violation of privacy occurred after the prominent epidemiologist openly criticised the Covid-19 treatment developed by the military intelligence agency and Airlangga University, [noting that the treatment had not been subjected to sufficiently rigorous clinical trials](#). To date, no one has been named as a suspect of all of the hacking incidents and death threats above.

But perhaps one of the few positive developments during the pandemic in Indonesia is the banning of the ultraconservative organisation Islamic Defenders Front (*Front Pembela Islam, FPI*) through the enactment of [a joint ministerial decree](#) at the end of 2020. The government cites the involvement of many leaders and members of the FPI in terrorist and vigilante activities that conflicted with the Pancasila – the national ideology that many believe promotes unity and diversity – to be the reason behind the ban. Curiously, [Amnesty International Indonesia](#) claims that the ban erodes civil freedom. The rights organisation appears to neglect the fact that the FPI was renowned for being an intolerant Muslim organisation whose members repeatedly committed [violence towards the religious minority](#).

The government's ban on the FPI came after [Rizieq Shihab](#), its leader, was arrested for defying Covid-19 restrictions since he held a large religious event attended by thousands of his followers after returning from his self-imposed exile in Saudi Arabia. The government's handling of the FPI, however, was not without problems. On 7 December 2020, six members of the FPI were killed by the police in an attempt to investigate Rizieq Shihab in Kerawang, Indonesia. According to the national police spokesman, the police officers had to take such action because the slain members of the FPI attacked the police officers during the investigation process. Yet, [the national human rights institution](#) finds that the killing was unlawful, suggesting that the case should be brought to a criminal court.

## Vaccination as the Only Way Forward?

In Asia, countries such as [South Korea](#) and [Taiwan](#) have been lauded globally for their seemingly effective strategies in curbing the spread of the virus without compromising democracy through a robust system of testing, tracing and isolating, which have been performed within a transparent and democratic legal framework. But Indonesia seems to be heading in a very different direction. The Jokowi government response was not performing a lockdown in the early phase of the pandemic – even though it had a strong legal basis under the health emergency status – as well as relying on pseudoscientific claims rather than actual science, and being reluctant to reveal the correct number of positive cases to the public. Such inappropriate responses have rendered the government unable to control the spread of Covid-19 since it is already too late to follow the lessons from other Asian countries to stop the spread of the disease. Consequently, Covid-19 vaccinations appear to be the only solution to get out of the pandemic.

As in many low and middle-income countries, Indonesia relies on CoronaVac, a vaccine developed by Sinovac biotech in China. But following the initial clinical trials in China, the research trials of the Sinovac vaccine conducted jointly by Universitas Padjajaran and Bio Farma in Indonesia only included adults aged 18 to 59. Kusnandi Rusmil, the head of the research team, said that the government's priority to inoculate the working adults was because these productive people could work hard so that the country would not have an economic deficit. The statement was confirmed by [the government's regulation on the Covid-19 vaccination program](#), according to which the vaccination is aimed at reaching herd immunity as soon as possible and reviving the flagging economy. Some commentators have observed

that such vaccination policy could effectively slow community transmission, given that younger working adults are generally more active.

Nevertheless, such an unconventional approach to prioritising young people, police and military officers, public officials, teachers and other people who contribute to the economy aside from the medical workers would not affect mortality rates. In particular, older people are at much higher risk of dying than younger Indonesians due to their high-risk status. So, if the government did not vaccinate the elderly because of their supposed limited economic value and their age, it would constitute [discrimination](#), which is prohibited under Article 28I(2) of the Indonesian Constitution.

Since mid-January 2021, Indonesia has started its ambitious plan to vaccinate 181 million of its population in 15 months, with Jokowi being the first to receive the vaccine jab. The mass vaccination program began after the health authorities declared the Sinovac vaccine was 65.3 per cent effective. [The Economist Intelligence Unit](#) estimates more than 60 per cent of the population will have been vaccinated in Indonesia by Q3 of 2023. However, almost two months after the rollout of the Covid-19 vaccination programme began, the average doses administered per day is only about 200,000. At this rate, Indonesians will, unfortunately, still have to wait for more than five years until the vaccination programme is finished. More recently, the Jokowi administration issued a presidential regulation that requires targeted individuals to take up the vaccine. [The regulation](#) allows government institutions at the national and local levels to stop social assistance, government services and impose fines on anyone who refuses vaccination. While mandatory vaccination could legitimately be justified as a means to protect public health, the government must ensure that imposing sanctions on individuals for not taking the vaccine is carried out on a case-by-case basis, and the sanction given is proportional. Careful consideration is crucial because the vaccine might not be suitable for particular individuals who demonstrate that the vaccine may adversely affect their health, and because millions of Indonesians still live in poverty, which makes them unable to pay the fines.

In the end, it remains to be seen whether the Jokowi government will continue to compromise democracy and the fundamental rights of its citizens in its effort in handling the Covid-19 pandemic.

