

## The Problem on Law regarding the Protection of the Right to Health of Older People in the Situation of the Coronavirus 2019 Pandemic in Thailand\*

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### Abstract

This article aims to study the problems regarding the right to health of older people that is lacking protection and promotion properly in the situation of the Coronavirus 2019 pandemic in Thailand. Because of the problems regarding law enforcement improperly for problem solving in public health, discrimination, inaccessibility to state aid and the strict and incompatible with the principle of proportionality measures, that is the measure for older people and care home closing measure. From the study, there were proposals to deal with various problems including 1) Proposed repeal the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005) enforcement. And enforce the Communicable Disease Act B.E. 2558 (2015) mainly in the situation of the Coronavirus 2019 pandemic. By the way, the Communicable Disease Act shall be amended to be compatible with the protection and controlling the pandemic as the severity of the situation of the Coronavirus 2019. 2) Proposed that, the law regarding the protection and the promotion of the right to health of older people should be enforced seriously to facilitate older people to be able to access to medical measures thoroughly and properly. And 3) Proposed repeal lockdown and care home closing measures. But the government should make the public health guidance for older people and care homes by determining the care homes to follow the guidance about measures in care home strictly.

**Keywords:** the right to health, older people, the situation of the Coronavirus 2019 pandemic

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### บทคัดย่อ

บทความนี้มีวัตถุประสงค์เพื่อศึกษาถึงปัญหาเกี่ยวกับสิทธิในสุขภาพของผู้สูงอายุที่ไม่ได้รับการคุ้มครองและส่งเสริมอย่างเหมาะสมในสถานการณ์การระบาดของโรคติดเชื้อไวรัสโคโรนา 2019 ในประเทศไทย เนื่องด้วยประเด็นปัญหาเกี่ยวกับการบังคับใช้กฎหมายที่ไม่เหมาะสมในการแก้ปัญหาเชิงสาธารณสุข การถูกเลือกปฏิบัติ การเข้าถึงความช่วยเหลือของรัฐ และมาตรการที่มีความเข้มงวดอันไม่เป็นไปตามหลักความได้สัดส่วน คือ มาตรการพึงปฏิบัติต่อผู้สูงอายุและคำสั่งปิดสถานดูแลผู้สูงอายุ จากการศึกษามีข้อเสนอแนะดังนี้ 1) เสนอให้ยกเลิกการบังคับใช้พระราชกำหนดการบริหารราชการในสถานการณ์ฉุกเฉิน พ.ศ. 2548 และเปลี่ยนไปบังคับใช้พระราชบัญญัติโรคติดต่อ พ.ศ. 2558 เป็นหลักในสถานการณ์การระบาดของโรคติดเชื้อไวรัสโคโรนา โดยพระราชบัญญัติโรคติดต่อ พ.ศ. 2558 ควรได้รับการแก้ไขเพิ่มเติมเพื่อให้สอดคล้องต่อการป้องกันและการควบคุมการระบาดตามความร้ายแรงของสถานการณ์การระบาดของโรคติดเชื้อไวรัสโคโรนา 2) เสนอให้มีการบังคับใช้กฎหมายเกี่ยวกับการคุ้มครองและส่งเสริมสิทธิในสุขภาพของผู้สูงอายุที่มีอยู่แล้วอย่างจริงจังเพื่อช่วยให้ผู้สูงอายุสามารถเข้าถึงมาตรการทางการแพทย์ได้อย่างทั่วถึงและเหมาะสม และ 3) เสนอให้ยกเลิกมาตรการพึงปฏิบัติต่อผู้สูงอายุและคำสั่งปิดสถานดูแลผู้สูงอายุ รัฐควรออกเป็นคำแนะนำเชิงสาธารณสุขต่อผู้สูงอายุและสถานดูแลผู้สูงอายุแทน โดยกำหนดให้สถานดูแลผู้สูงอายุปฏิบัติตามคำแนะนำเกี่ยวกับมาตรการในสถานดูแลผู้สูงอายุอย่างเคร่งครัด

**คำสำคัญ:** สิทธิในสุขภาพ, ผู้สูงอายุ, สถานการณ์การระบาดของโรคติดเชื้อไวรัสโคโรนา

## 1. Introduction

The Coronavirus pandemic had negatively affected countries all over the world and led to a loss of human life, especially older people, who had more at risk of infection and weak immune system. More than 95% of dead people were older than 60 years old.<sup>1</sup> So older people were vulnerable and needed to be protected and supported especially in this situation. However, there were some strict measures that affected the right to health of older people and caused problems as follows.

Firstly, the problems regarding law enforcement improperly in the Coronavirus pandemic. The government enforced the Emergency Decree on Public Administration in Emergency Situations mainly although it was not suitable for problem solving in public health. In addition, the law regarding the protection and the promotion of the right to health of older people was not enforced seriously in this situation.

Secondly, the problems regarding inaccessibility to medical services. Because many older people were unfamiliar with technology and internet, and some older people did not have smart phone to register, then they had to go to the application places. But those kinds of places were crowded and inappropriate for their health.<sup>2</sup> About vaccination, in Thailand there were older people about 12.5 million. But there were only 11.2% of them that got first dose of vaccine and 0.75% that got the second dose of vaccine.<sup>3</sup> Some infection testing services also did not serve older people.<sup>4</sup> And hospitals were insufficient for treatment.

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<sup>1</sup> The WHO Regional Office for Europe, 'Supporting older people during the COVID-19 pandemic is everyone's business' (WHO, 3 April 2020) <<https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/news/news/2020/4/supporting-older-people-during-the-covid-19pandemic-is-everyones-business#:~:text=Over%2095%25%20of%20these,other%20chronic%20underlying%20conditions.>> accessed 1 February 2021.

<sup>2</sup> Thairath, 'People without smartphone went to register "Rao Chana" and waited since dawn, the waiting line was long about kilometer' (Thairath, 15 February 2021) <<https://www.thairath.co.th/news/local/2032725>> accessed 14 July 2021.

<sup>3</sup> BBC, 'Covid-19: Vaccine that Thailand has and offer to change strategy to focus on vaccinating older people and people with 7 risk disease' (BBC, 3 July 2021) <<https://www.bbc.com/thai/thailand-57704369>> accessed 14 July 2021.

<sup>4</sup> PPTV, 'Covid testing sites and government hospitals did not test for people who were over 60 years old' (PPTV, 10 July 2021) <<https://www.pptvhd36.com/news/%E0%B8%AA%E0%B8%B8%E0%B8%82%E0%B8%A0%E0%B8%B2%E0%B8%9E/151369>> accessed 14 July 2021.

Then there were many older people who could not access medical service timely and died. In the third wave of epidemic, most of the fatalities were older people. There were 1,322 older people died in that time.<sup>5</sup>

Lastly, the problems regarding lock down measure and care home closing measure. People who were 70 years old or older had to stay at home to prevent infection.<sup>6</sup> And the care home was defined as the place at risk of epidemic and needed to be closed.<sup>7</sup> It made some older people who usually received the medical treatment at care home had to go to hospital instead, even though they needed to be taken care from experienced care givers who have specialized skills and trained by care home.<sup>8</sup> So, such measures affected to their freedom of movement and right to health.

By the way, the human rights committee asked states for properly exercising state power and enforcing measures to solve problems in this pandemic by both overcoming the crisis and respecting for human rights.<sup>9</sup> And government need to be under the principle of the international law that is International Covenant on Civil and Political Rights (ICCPR) and Emergency Measures and Covid-19 Guidance. This article investigates that Thai law enforcement and measures regarding the right to health of older people in this situation if they are suitable and respect the human right. To answer this question, this article employs a comparative legal analysis, examining the legal frameworks of United Kingdom and Singapore. This methodology allows for a deeper understanding of how different legal system navigate right to health for older people during a pandemic in Thailand

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<sup>5</sup> BBC, 'Covid-19: Bangkok was prepared for quarantine in the community after lack of hospital beds, CCSA reported there were 5 people died at home' (BBC, 14 July 2021) <<https://www.bbc.com/thai/thailand-57693462>> accessed 14 July 2021.

<sup>6</sup> Regulation Issued Under Section 9 of The Emergency Decree on Public Administration in Emergency Situations, B.E. 2548 (2005) (No. 1), Section 8

<sup>7</sup> Regulation Issued Under Section 9 of The Emergency Decree on Public Administration in Emergency Situations, B.E. 2548 (2005) (No. 5), Section 6

<sup>8</sup> Post Today, 'The prime minister was asked to review care home closure' (Post Today, 4 May 2020) <<https://www.posttoday.com/social/general/622541>> accessed 5 March 2021.

<sup>9</sup> The Office of the High Commissioner for Human Rights, 'COVID-19 and Human Rights Treaty Bodies' (United Nations) <<https://www.ohchr.org/EN/HRBodies/Pages/COVID-19-and-TreatyBodies.aspx>> accessed 18 January 2021.

## 2. Concept about the protection of the right to health of older people in the situation of the Coronavirus pandemic

To analyze the issue of the right to health of older people in the situation of the Coronavirus 2019 pandemic, it is necessary to study these following concepts:

### 2.1 Concept about the right to health

The right to health means rights to the highest standard of physical and mental health,<sup>10</sup> whether it is rights to access standard health service, rights to prevention treatment and controlling of disease, rights to public health facilities, including all factors that can make people healthy. All factors must be appropriate and timely.<sup>11</sup> The right to health is a type of human right because it is an indispensable fundamental right. All humans deserve the best standard of health as much as possible to facilitate life in society with quality and dignity.<sup>12</sup> There must be no discrimination and the right to health must be protected and promoted by the state which the right to health of older people need to be protected and promoted especially in the pandemic.

### 2.2 Concept about the state power in situation of public emergency

The situation of public emergency means the situation that affects or may affect to public order or endangers the security of state or may cause the country or any part of the country to be in a critical situation or relates to terrorism or war.<sup>13</sup>

Emergency power means the special power of the executive branch that is exercised in the situation of public emergency to deal with threats which happen suddenly with serious impact on society and people, cause obstacles in the administration of the country and the normal power were not enough to maintain order and security effectively.<sup>14</sup>

In the situation of the Coronavirus pandemic, which was the situation of public emergency, the state had special power to manage crises to get back to normal situation as soon as possible by enforcing strict legal measures. It had the legitimate power to restrict some rights

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<sup>10</sup> World Health Organization 'Constitution of World Health Organization' (WHO) <<https://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf>> accessed 21 May 2021.

<sup>11</sup> Office of the United Nations High Commissioner for Human Rights, 'OHCHR and the right to health' (United Nations) <<https://www.ohchr.org/EN/Issues/ESCR/Pages/Health.aspx>> accessed 20 May 2021.

<sup>12</sup> Committee on Economic, Social and Cultural Rights, 'General comment No. 14 on the highest attainable standard of health' (United Nations) <<https://undocs.org/E/C.12/2000/4>> accessed 20 May 2021.

<sup>13</sup> Emergency Decree on Public Administration in Emergency Situations, B.E. 2548 (2005), Section 4

<sup>14</sup> John Salmond, *Jurisprudence* (7th edn, Sweet & Maxwell 1924) 144.

and freedom of citizens, including limiting the right to health of older people that in normal situation cannot be done.

### **2.3 Concept about Derogation of Human Rights in the situation of public emergency**

The exercise of state power in situation of public emergency is acceptable even in international law. Because in the unusual situation states need greater power to eliminate serious crises that threaten the existence of states and to fulfill obligations as soon as possible. However, there are principles about derogation of human rights as a framework for the exercise of state power in situation of public emergency. States can exercise special power as necessary to the seriousness of the situation. Such principles are in ICCPR and in other principles as following:

#### **2.3.1 Derogation of Human Rights in ICCPR**

ICCPR is UN human rights treaties that state parties are obligated to respect and protect human rights according to UN charter to make citizen have civil and political rights in economy, society and culture equally.<sup>15</sup> Thailand as a party by accession is bound to comply with such obligation.

The principle of derogation on human rights in Article 4 in ICCPR allows states to exempt some rights and freedom of citizen in situation of public emergency. But it must be public emergency that threatens the survival of the state, and the state of emergency has been declared officially. States can enforce legal measures that derogate on human rights as necessary depending on the seriousness of the situation, but such measures must not conflict with other obligations under international law, not be discrimination, and notify other state parties about the provisions which are avoided and the reason for avoiding immediately.<sup>16</sup> However, there are Non-derogable rights even in situation of public emergency.

For example, the right to life, the right to not be torture or treated or punished in a way that that is cruel, inhuman or degrading, the right not to be held in slavery, freedom of opinion and expression, etc.<sup>17</sup>

Therefore, in the Coronavirus pandemic the state can exempt some rights and freedom, including the right to health of older people. As it is not a type of non-derogable rights.

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<sup>15</sup> Office of the United Nations High Commissioner for Human Rights, 'International Covenant on Civil and Political Rights' (United Nations) <<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> accessed 10 June 2021.

<sup>16</sup> International Covenant on Civil and Political Rights, Article 4

<sup>17</sup> *ibid.*

Anyway, the derogation must not conflict with other obligations under international law, not discrimination, and notify other state parties.

### 2.3.2 Emergency Measures and Covid-19: Guidance

Emergency Measures and Covid-19: Guidance which was issued by Office of the United Nations High Commissioner for Human Rights (OHCHR) was about the exercise of state power in Coronavirus pandemic. States could exercise the emergency measures, but they must be under international law especially to ICCPR, time-bound with an end term and on a temporary basis.<sup>18</sup>

Emergency measures must be legality and restrictions must be imposed by national law. Such measures must not be arbitrary or unreasonable, they must be clear and common people can understand. They also must be used as necessary for the prevention and remedy the situation under the principle of necessity. They must be appropriate and responsive to urgent social needs. They must be proportional to the severity that occur by the method with the least serious consequences while still achieving objectives. Besides, it must be non-discrimination and there is no restriction that is contrary to international human rights law. All restrictions should be strictly interpreted, and such measures must be reviewed by the legislature and the judiciary.<sup>19</sup>

As a result, although states could adopt emergency measures that affected the right to health of older people, such measures must be based on the principle of necessity and proportional, non-discrimination, time-bound, temporary, legality and comply with the principles of international law relating to the derogation of human rights in situation of public emergency.

### 3. Analysis of problems regarding law enforcement in the situation of the Coronavirus Pandemic

In Thailand the state exercised law and measures in the situation of the Coronavirus pandemic to control the epidemic and solve the crisis. This article compares law and measure enforcement in Thailand with Singapore and United Kingdom because United Kingdom has the population and measures quite similar to Thailand. While Singapore had been lauded as highly effective in its management of COVID-19, with a very low number of deaths from the virus. By the

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<sup>18</sup> Office of the United Nations High Commissioner for Human Rights, 'Emergency Measures and Covid-19: Guidance' (United Nations) <[https://www.ohchr.org/Documents/Events/EmergencyMeasures\\_Covid19.pdf](https://www.ohchr.org/Documents/Events/EmergencyMeasures_Covid19.pdf)> accessed 12 June 2021.

<sup>19</sup> *ibid.*

way, there are issues to be analyzed related to law enforcement in Thailand that are inappropriate and inconsistent with the situation.

### **3.1 Analysis of the propriety of Emergency Decree on Public Administration in Emergency Situations enforcement**

According to a study of the right to health of older people in Thai law in this pandemic, it was found that there were 2 important law enforcement: defining that Coronavirus disease is a dangerous communicable disease according to the Communicable Disease Act B.E. 2558 and exercising power of the prime minister according to the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 to declare a nation-wide state of emergency and enforce many strict measures.

While in Singapore, the main role lied with the Minister of Health which exercised the power from the Infectious Diseases Act 1976 to issue regulations and epidemic prevention measures,<sup>20</sup> and afterwards, COVID-19 (Temporary Measures) Act 2020 was legislated to adopt many strict measures and regulations about lockdown, movement, communication, traveling, group activities, and keeping a distance.<sup>21</sup>

In the UK, the Public Health (Control of Disease) Act 1984 was mainly enforced to adopt many measures to control the epidemic, and afterwards, the Coronavirus Act 2020 was legislated to solve problems about the epidemic, such as closure orders and cancellation of some events.<sup>22</sup> The government exercised power from the Public Health (Control of Disease) Act to legislate the Lockdown Laws to enforce the epidemic prevention regulations.<sup>23</sup>

According to a study of the law enforcement of Singapore and UK, it was found that both of them mainly enforced law about the infectious diseases to control the epidemic and enforced the measures which were suitable for the Coronavirus pandemic. While the Emergency Decree on Public Administration in Emergency Situations was enforced mainly in Thailand not the Communicable Disease Act to solve problems of public health. These laws are very different from each other.

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<sup>20</sup> Section 73 of Infectious Diseases Act

<sup>21</sup> COVID-19 (Temporary Measures) Act 2020

<sup>22</sup> Coronavirus Act 2020

<sup>23</sup> UK Parliament, House of Commons Library, Coronavirus: Lockdown laws.



The Communicable Disease Act's objectives are to control, prevent, and treatment the infectious diseases. It focused on solving public health problems by appropriate agency which is the National Communicable Disease Committee that the public health minister is the chairman.<sup>24</sup>

The Emergency Decree on Public Administration in Emergency Situations' objective is to control and solve problems in situation of public emergency with urgent and unavoidable needs, affects the security of the state that needs to be stopped as soon as possible, and the normal administration cannot solve such problems to quickly return to normal situation. So, the measures for situation of public emergency must be defined in this decree. The special power is given to the executive branch that the prime minister, with the approval of the minister, has power to declare the state of emergency to enforce throughout the kingdom of certain localities.<sup>25</sup> Emergency declarations remain in force for a maximum of three months which it can be extended for a maximum of three months each time. If the situation of public emergency ends, the prime minister has to announce the cancellation.<sup>26</sup>

By the way, the state of emergency had been declared since March 2020 and extended until 30 September 2022 in Thailand. The term had been too long. The state could solve such problems by enforcement the Communicable Disease Act that is the most appropriate law to be used in the pandemic not the Emergency Decree on Public Administration.

On the issue of exercising power of the state to adopt some strict measure, the Communicable Disease Act provides certain state power as well the Emergency Decree on Public Administration in Emergency Situations, such as detention, quarantine, searching houses, prohibition of entering the specified place, prohibition of traveling by the specified routes or vehicles, etc.

Therefore, the state could enforce the Communicable Disease Act to adopt suitable measures without enforcing the Emergency Decree on Public Administration in Emergency Situations and this Act was more suitable for public health problem solving. Because the enforcement the Emergency Decree on Public Administration in Emergency Situations was very strict and affect to the rights and freedom of people, including the right to health of older people. Anyway, the Communicable Disease Act should be amended to be suitable for managing and controlling the pandemic that was the emerging infectious diseases and different from other infectious disease that we had ever known in the past.

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<sup>24</sup> Communicable Disease Act, B.E. 2558 (2015), Section 11

<sup>25</sup> Emergency Decree on Public Administration in Emergency Situations, B.E. 2548 (2005), Section 5

<sup>26</sup> *ibid.*

### 3.2 Analysis of the propriety of law enforcement in Coronavirus pandemic

According to a study of Thai law, there were laws about the protection and promotion the right to health of older people, but lack of serious enforcement.

In the Constitution, the state must ensure that older people can access public health services, including the prevention and elimination of dangerous communication diseases from the state free of charge.<sup>27</sup> And the state must prevent an unfair discrimination against older people due to the different age.<sup>28</sup> In fact, the problem is that some older people suffered from being denied medical services due to age and health factors which was an unfair discrimination.

In the Act on the elderly B.E. 2546 (2003), the state must ensure that older people are protected, promoted and supported in terms of medical and public health services by providing convenience and speed for them specially.<sup>29</sup> But in the pandemic, older people who needed special facilitation for accessing medical services were not provided the convenience and speed as the law.

In the National Health Security Act B.E. 2545 (2002), older people have the rights to access standard and effective public health services like other people.<sup>30</sup> The state must ensure that they can exercise their rights and equitably access such services like other people without discrimination. But in the pandemic many older people were not the first group to get vaccine quickly by prioritizing vaccination could not access medical service timely and died.

Therefore, if such laws were enforced seriously, the right to health of older people would be protected and promoted appropriately in this pandemic.

### 4. Analysis of the propriety of measures in Coronavirus pandemic

In Coronavirus pandemic, the state exercised power to adopt some measures, such as lockdown, care home closing and medical services. From a study, measures in Thailand, Singapore and the United Kingdom are compared as follows:

#### 4.1 Comparative Analysis of lockdown measure enforcement

According to a study, in Thailand there was measure for older people who were 70 years old or older to stay at home and avoid leaving their homes. People who were 60-69 years old

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<sup>27</sup> Constitution of the Kingdom of Thailand, B.E. 2560 (2017), Section 47

<sup>28</sup> Constitution of the Kingdom of Thailand, B.E. 2560 (2017), Section 27

<sup>29</sup> Act on the elderly B.E. 2546 (2003), Section 11

<sup>30</sup> National Health Security Act B.E. 2545 (2002), Section 5

also had to do if they had congenital disease.<sup>31</sup> Although older people with necessity could leave their homes, such measure affected their freedom of movement and right to health. However, there were no penalties for violators. In practice, older people did not follow such measure because there were no penalties, and they have necessity to leave homes.

In Singapore, lockdown measure was enforced strictly and there were penalties for violators that was called “Circuit Break Measures.” All people could not leave home unnecessarily.<sup>32</sup> All activities that focused on older people had been suspended.<sup>33</sup>

If anyone needed to leave home to visit older people who were family member, they could do it by following precautions and safety measures.<sup>34</sup>

However, Singapore government considered about the right to health of older people by facilitating and assisting them who had to stay at home, for example: proactive testing and vaccination at home, home visiting, hotline service for older people and supporting the delivery of food and daily essentials, etc.<sup>35</sup>

In the UK, Lockdown law was enforced by announcement a nationwide lockdown<sup>36</sup> and ordered people to stay at home. People could leave their homes only in case of necessity.<sup>37</sup> Regarding older people, the UK government suggested that older people who were 70 years old or older had to isolate in their homes and strictly follow the social distancing measures. But there were state aid measures for older people who could not leave their homes, they could receive the compensation if they were sick whether there were symptoms of Coronavirus disease or not. Moreover, there were the Test and Trace Support Payment (£500) for older people who had to self-isolate and had tested positive for Coronavirus disease.

<sup>31</sup> Regulation Issued Under Section 9 of The Emergency Decree on Public Administration in Emergency Situations, B.E. 2548 (2005) (No. 1), Section 8

<sup>32</sup> Regulation 4 of COVID-19 (Temporary Measures) (Control Order) Regulations 2020

<sup>33</sup> Government of Singapore, ‘Taking care of our seniors amidst COVID-19’ (Government of Singapore, 21 March 2021) <<https://www.gov.sg/article/taking-care-of-our-seniors-amidst-covid-19>> accessed 20 August 2021.

<sup>34</sup> Government of Singapore, ‘What you can and cannot do during the circuit breaker period’ (Government of Singapore, 11 April 2020) <<https://www.gov.sg/article/what-you-can-and-cannot-do-during-the-circuit-breaker-period#:~:text=A%3A%20You%20may%20still%20exercise,be%20observed%20at%20all%20times.>> accessed 20 August 2021.

<sup>35</sup> The Asian Working Group for Sarcopenia, ‘COVID-19 and Older People in Asia: AWGS Calls to Actions’ (AWGS) <<https://www.ttsh.com.sg/Patients-and-Visitors/Medical-Services/Institute%20of%20>> accessed 20 August 2021.

<sup>36</sup> UK Parliament, Coronavirus: Lockdown laws.

<sup>37</sup> UK Parliament, Coronavirus: A History of English Lockdown Laws.

#### 4.2 Comparative Analysis of care home measure enforcement

In Thailand, the government enforced the care home closing measure.<sup>38</sup> Such measure could be changed due to the seriousness of situation. For example: in the No.7, only the care homes that accepted older people to stay overnight regularly could be opened,<sup>39</sup>

in No.10, allowing care homes to open for daily service and traveling to or from care homes was an exception to the measure for older people.<sup>40</sup> And there were penalties for those who violated such measures.<sup>41</sup> Moreover, there were problems about lack of access to vaccine for older people in care home.<sup>42</sup>

In Singapore, care home closing measure were enforced strictly to prevent and control of epidemic, such as care home closing measure, providing personal protective equipment for care home staff, social distancing measure in care home by separating space in care home and suspension of visiting older people.<sup>43</sup> Moreover, the government attached great importance to testing and vaccination by regular testing staff and vaccinating older people in care home, including all staff in care home.<sup>44</sup>

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<sup>38</sup> Regulation Issued Under Section 9 of The Emergency Decree on Public Administration in Emergency Situations, B.E. 2548 (2005) (No. 5), Section 2 (6)

<sup>39</sup> Regulation Issued Under Section 9 of The Emergency Decree on Public Administration in Emergency Situations, B.E. 2548 (2005) (No. 7), Section 3

<sup>40</sup> Regulation Issued Under Section 9 of The Emergency Decree on Public Administration in Emergency Situations, B.E. 2548 (2005) (No. 10), Section 3

<sup>41</sup> Regulation Issued Under Section 9 of The Emergency Decree on Public Administration in Emergency Situations, B.E. 2548 (2005) (No. 1), Section 15

<sup>42</sup> PPTV, 'Care homes could not access Covid-19 vaccine' (PPTV, 18 May 2021)

<<https://www.pptvhd36.com/news/%E0%B8%AA%E0%B8%B8%E0%B8%82%E0%B8%A0%E0%B8%B2%E0%B8%9E/147676>> accessed 14 July 2021.

<sup>43</sup> The Asian Working Group for Sarcopenia, 'COVID-19 and Older People in Asia: AWGS Calls to Actions' (n 57).

<sup>44</sup> Government of Singapore, 'Vaccinate or Regular Test Regime for selected sectors' (Government of Singapore, 6 August 2021) <<https://www.gov.sg/article/vaccinate-or-regular-test-regime-for-selected-sectors>> accessed 20 August 2021.

In the UK, there was guideline for care home in the situation of Coronavirus pandemic<sup>45</sup> and care home measures was enforced by not allowing outsiders to visit.<sup>46</sup> The Lockdown law stipulated that visiting care home was not the necessity to leave homes.<sup>47</sup>

The government also attached great importance to vaccination for older people in care home and staff as a priority group.<sup>48</sup>

#### 4.3 Comparative Analysis of medical measures enforcement

In Thailand, medical measures were enforced by focusing on vaccinating. Vaccination was divided in to 3 phases and older people group were classified as the second phase from 7 June to 31 July 2021.<sup>49</sup> But that strategy of vaccination was changed later. Older people faced problems about difficult vaccine registration and obstacles in leaving homes to the vaccination site. As a result, few older people could get vaccinated, and many older people died in the third wave of the pandemic. So, the Ministry of Public Health changed the vaccination plan in July and focused on vaccinating older people.<sup>50</sup> In addition, during the first two months there were problems about inequality in the allocation and distribution of vaccine, there were less vaccine

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<sup>45</sup> UK Government, 'Guidance Admission and care of residents in a care home during COVID-19' (UK Government) < <https://www.gov.uk/government/publications/coronavirus-covid-19-admission-and-care-of-people-in-care-homes/coronavirus-covid-19-admission-and-care-of-people-in-care-homes>> accessed 31 August 2021.

<sup>46</sup> BBC News, 'Covid: What happened to care homes early in the pandemic?' (BBC News, 28 May 2021) <<https://www.bbc.com/news/52674073>> accessed 31 August 2021.

<sup>47</sup> *ibid.*

<sup>48</sup> UK Government, 'The roles of the MHRA and JCVI in COVID-19 vaccines' (UK Government, 2 December 2020) <<https://ukhsa.blog.gov.uk/2020/12/02/the-roles-of-the-mhra-and-jcvi-in-covid-19-vaccines/>> accessed 5 September 2021.

<sup>49</sup> Post Today, 'Vaccine Registration for older people and people with congenital diseases started 1 May' (Post Today, 28 April 2021) <<https://www.posttoday.com/social/general/651558>> accessed 14 July 2021.

<sup>50</sup> BBC NEWS, 'Covid-19: changed strategy and plan administration mistake' (BBC NEWS, 21 July 2021) <<https://www.bbc.com/thai/thailand-57915276>> accessed 15 September 2021.

in the provincials<sup>51</sup> and without facilities for older people as much as in Bangkok, such as walk-in vaccination site,<sup>52</sup> the registration for vaccine at home,<sup>53</sup> etc.

In Singapore, medical measures were enforced thoroughly and quickly by prioritizing vaccination for older people, people who lived in care homes and immunocompromised host as the first group.<sup>54</sup> In February 2021, people who were 70 years old and over were sent invitation letter to apply for vaccination at a clinic or vaccination center near their homes and then people who were 60-69 years old were sent.<sup>55</sup> In June, older people could get vaccinated at the vaccination center without registration and they could get vaccine at home.<sup>56</sup>

In the UK, medical measures were enforced thoroughly and quickly too. The Joint Committee on Vaccination and Immunization (JCVI) had been established to ensure that people could get vaccinated as soon as possible.<sup>57</sup> Older people and care home staff got vaccinated first.<sup>58</sup> The UK vaccine strategy was very successful because vaccine were provided quickly and

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<sup>51</sup> Prachachat, 'Ministry of Public Health reported that in August there will be 10 million doses of vaccine for the provincials' (Prachachat, 2 August 2021) <<https://www.prachachat.net/marketing/news-729292>> accessed 15 September 2021.

<sup>52</sup> Manager Online, 'Department of Medical Services allowed people who were 75 years old or over to get vaccine without registration at Bang Sue Station, start 30 June' (Manager Online, 29 June 2021) <<https://mgronline.com/infographic/detail/9640000063065>> accessed 15 September 2021.

<sup>53</sup> Prachachat, 'vaccine at home registration for bedridden patient-older people in Bangkok' (Prachachat, 19 August 2021) <<https://www.prachachat.net/general/news-742840>> accessed 15 September 2021.

<sup>54</sup> Ministry of Health Singapore, 'COVID-19 vaccination' (Ministry of Health Singapore) <<https://www.moh.gov.sg/covid-19/vaccination>> accessed 22 August 2021.

<sup>55</sup> Ministry of Health Singapore, 'Start of COVID-19 vaccination for seniors' (Ministry of Health Singapore) <<https://www.moh.gov.sg/news-highlights/details/start-of-covid-19-vaccination-for-seniors>> accessed 22 August 2021.

<sup>56</sup> The Straits Time, 'Walk-in Covid-19 vaccinations start for seniors aged 60 and above' (The Straits Time, 1 June 2021) <<https://www.straitstimes.com/singapore/health/walk-in-covid-19-vaccinations-start-for-seniors-aged-60-and-above>> accessed 22 August 2021.

<sup>57</sup> UK Government, 'Joint Committee on Vaccination and Immunisation: advice on priority groups for COVID-19 vaccination' (UK Government, 6 January 2021) <<https://www.gov.uk/government/publications/priority-groups-for-coronavirus-covid-19-vaccination-advice-from-the-jcvi-30-december-2020/joint-committee-on-vaccination-and-immunisation-advice-on-priority-groups-for-covid-19-vaccination-30-december-2020>> accessed 5 September 2021.

<sup>58</sup> UK Government, 'The roles of the MHRA and JCVI in COVID-19 vaccines' (n 48).

sufficiently. There were more than 2,000 vaccination center in the UK.<sup>59</sup> And older people could request for vaccine at home.<sup>60</sup>

#### 4.4 Conclusion

From a study by comparing with UK and Singapore, the UK lockdown measures were soft law like measure for older people in Thailand because they were liked guideline without coercion and penalties. While lockdown measure in Singapore was enforced strictly and there were penalties for violators. However, the government of Singapore and the UK adopted many measures to help older people who isolated at home and such measures were adequate and suitable for subsistence of older people although they could not work or leave their homes. While the lockdown measure was enforced in Thailand without any measures that could facilitate them adequately.

About care home closing measure, it was enforced strictly with penalties in Thailand and Singapore. But the government of Singapore and the UK attached great importance to vaccination for older people and staff in care home. While such measures were enforced strictly without vaccination services in Thailand.

About medical measures, especially to vaccination, it was enforced thoroughly and quickly in the UK and Singapore. But in Thailand there were much vaccine and facilities only in Bangkok, and older people were not the first group to get vaccine quickly by prioritizing vaccination as in the UK and Singapore.

### 5. Suggestion

According to a study to find measures about the right to health of older people which are suitable for public health emergency situation management and comply with the principles of human rights, there were suggestions as follows:

#### 5.1 Suggestion about the Communicable Disease Act enforcement

Due to the impropriety of the Emergency Decree on Public Administration in Emergency Situations enforcement. So, it should be cancelled, and the government should enforce the

<sup>59</sup> Wiroj Lertchittham, 'The UK situation after loosening the lockdown, but the amount of infection was decreased and tens of deaths. How to do it?' (The Standard, 2 August 2021) <<https://thestandard.co/key-messages-uk-after-full-lockdown/>> accessed 5 September 2021.

<sup>60</sup> UK Government, Adult Social Care Covid-19 Vaccine Q&A' (UK Government) <<file:///C:/Users/User/Downloads/Adult%20social%20care%20COVID%2019%20vaccine%20Q%20and%20A.pdf>> accessed 5 September 2021.

Communicable Disease Act mainly in the situation of the Coronavirus 2019 pandemic. But the Communicable Disease Act should be amended to be compatible with the preventing and controlling the pandemic as the severity of the situation of the Coronavirus 2019.

The Communicable Disease Act should be added the definition of “Public Health Emergency” in section 4. And it also should be added a category “public health emergency situation management” to separate the management in the case of the severe communicable diseases from the communicable diseases in normal situation. Moreover, it should be added about measures to help and facilitate the vulnerable people, older people or people with congenital disease, to be protected and promoted their health appropriately. And the state must prevent an unfair discrimination against the vulnerable people.

### **5.2 Suggestion about the law enforcement about the right to health of older people**

The law regarding the protection and the promotion of the right to health of older people should be enforced seriously to be in according with the constitution, the Act on the elderly, the National Health Act and the National Health Security Act by enforcing measures which are suitable for protecting and promoting the right to health of older people in the situation of the pandemic. The state must ensure that they can access all medical services timely and conveniently without discrimination.

### **5.3 Suggestion about lockdown measures**

Lockdown measures should not be enforced strictly like Singapore because most of Thai older people had to work and take care themselves and there were not enough facilities for them to stay at home as in Singapore and the UK. So, the government should have guideline for them like the UK to let them know how to take care themselves in this situation without penalties.

### **5.4 Suggestion about care home measure**

Care home closing measure also should not be enforced strictly with penalties. But there should be measures for temporary term. When the situation is worse, outsiders cannot visit temporarily, and they should contact by telephone or video call. There should be telemedicine from hospital and care home to make older people can know how to take care themselves properly. When the situation is better, outsiders can visit but they have to get vaccine first and care home should provide suitable spaces for them following social distancing measures. Moreover, the government should provide vaccine for older people and staff in care home quickly and adequately.



### 5.5 Suggestion about medical measures enforcement

The medical measures should be enforced thoroughly and quickly, especially to vaccination. It should be allocated and distributed thoroughly and equally. There should be facilities like walk-in vaccination and vaccine at home in all provinces not only in Bangkok. And older people should be the first group to get vaccine by prioritizing vaccination as in the UK and Singapore. Medical measures are very important to protect and promote the right to health of older people in the situation of Coronavirus pandemic that the government need to focus and adapt the foreign measures as much as possible to make older people to access such measures thoroughly and comply with human rights and international law.