

Government Responsibilities in the Health Services of the Indonesian People Post the Implementation of the New Health Law

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Abstract

This research investigates the rationale for employing the Omnibus Law method in the enactment of Indonesia's New Health Law, scrutinizes the liberalization of health services within it, and assesses the government's obligations post-implementation. Utilizing normative legal research and an analytical framework, this study examines the legal provisions and implications of the New Health Law, particularly regarding government responsibilities and health service liberalization. This research employs normative legal analysis and an analytical approach to assess the legal, social, and constitutional dimensions surrounding the New Health Law and its impact on Indonesian health services. The study finds that while the government aims to address health sector challenges and strengthen regulations through Law Number 17 of 2023, concerns arise regarding the removal of mandatory health sector spending. This raises constitutional and ideological questions, highlighting the need for judicial review to uphold government responsibilities in providing comprehensive health services. This research underscores the importance of aligning health policies with Indonesia's foundational principles, ensuring legislative measures prioritize citizen welfare and uphold constitutional mandates. Contributing to existing literature, this research offers insights into the legal and policy implications of Indonesia's New Health Law, informing future debates and potential reforms in the healthcare sector.

Keywords: Responsibilities, Health Services, New Health Law.

Introduction

Health is a basic need of society and the government must provide health services to the community to meet their basic needs. Because health services are a constitutional right for every citizen and the state is obliged to provide health services to its people. (Marif, Nurhaedah, dan Bakhtiar 2021:295) Health services are provided to maintain health, prevent disease, treat disease and restore health aimed at individuals, groups or communities. (Indrastuti 2022) Therefore, the government must guarantee public health services as a form of health protection for the community. (Susniwati dan Kurhayadi 2020:350) However, health services to the Indonesian people have experienced a shift due to changes in the substance of Law Number 17 of 2023 concerning Health, which the House of Representatives officially ratified on July 11, 2023. Previously, Article 171 of Law Number 36 of 2009 concerning Health regulated the amount at 5 percent of the State Revenue and Expenditure Budget and 10 percent of the Regional Revenue and Expenditure Budget, excluding salaries. The implementation of Law Number 17 of 2023 is in the spotlight because mandatory spending in the health sector has been removed. (Rahmawati 2023) Law Number 17 of 2023 has caused problems because the elimination of mandatory spending in the health sector means eliminating the government's responsibility in providing health services to the Indonesian people.

Various studies have explored the New Health Law from various angles. I Nyoman Bagiastra reported that the idea of the Omnibus Law on Health aims to improve the level of public health in Indonesia. Therefore, it is necessary to revise and harmonize regulations nationally, but still based on the values of Pancasila so that the mission of improving the level of public health is realized in a comprehensive, affordable and fair manner. (Bagiastra 2023a:34) Meanwhile, Sofyan Iskandar noted that the Omnibus Law is a new method in the health sector. The government has the authority to change legal products in the health sector using the Omnibus Law method. There are at least 15 revised health regulations in the 2023 health sector legislation

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program.(Iskandar 2023a:3639) Meanwhile, Asrina Wijayanti noted that Law Number 17 of 2023 concerning Health is an important law that aims to improve the quality of the health service system in Indonesia. This law introduces new guidelines for monitoring the health care system, such as disease prevention, availability of health services, transparency in health care funding, etc.(Wijayanti 2023a) Meanwhile, Rikko Hudyono and Suparno reported that the new Health Omnibus Law provides opportunities for multi-bar professional organizations. However, the emergence of several professional organizations can create ethical ambiguity. Therefore, regulatory and controlling authority is needed from the state to safeguard the interests of society.(Hudyono dan Suparno 2023:242)

This research aims to examine the dynamics surrounding the reasons for using the Omnibus Law method in the New Health Law, analyze the liberalization of health services in the New Health Law, and analyze the government's responsibility in providing health services for the Indonesian people after the enactment of the New Health Law. By utilizing various scientific sources, policy documents and empirical data, researchers analyzed the government's responsibility in providing health services to the Indonesian people based on the Indonesian Constitution.

Method

This research is a type of normative legal research. This research conducted a review of various literature (Soekanto dan Mamudji 2009:234). Normative legal research uses legal analysis methods based on various applicable norms or doctrines with the aim of solving the legal problems being studied (Ibrahim 2006a:73). This research uses a statutory approach and an analytical approach. A statutory approach was taken because the focus of this research was on several applicable laws and regulations. Meanwhile, the analytical approach is carried out to examine the meaning of various terms in a regulation conceptually and practically.(Ibrahim 2006b:73) These two research approaches were chosen to find answers to legal problems. Therefore, the suitability between the research approach and legal issues is the main consideration in this research.

Results nd Discussion

Use of the Omnibus Law Method in the New Health Law

President Joko Widodo observed that hyperregulation hampers communication, investment and the fulfillment of the right to health in Indonesia. According to Joko Widodo, Indonesia is a country that has many regulations. There were 42,161 regulations recorded in 2022. The Ministry of Law and Human Rights recorded 17,468 Ministerial Regulations, 15,982 Regional Regulations, 4,711 Non-Ministerial Government Institution Regulations, and 4,000 Central Regulations.(Rizaty 2022) Joko Widodo explained that the existence of laws and regulations in Indonesia often overlaps and is disharmonious both horizontally and horizontally. The government needs to use the Omnibus Law method as an effort to adjust the rate of investment to make it easier for foreign investors to carry out business activities in Indonesia.(Aditya dan Fuadi 2021:64) The government uses the Omnibus Law method in the New Health Law with the aim of being able to answer various community problems in the health sector, such as the high number of stunted children, suboptimal health, and rejection from health professional organizations.(Iskandar 2023) In addition, the use of the Omnibus Law method in the Health Law aims to strengthen health regulations which are divided into several different laws,(Susetiyo dan Ifitah 2021) so it is necessary to harmonize regulations in the health sector.

The government is trying to implement the Health Omnibus Law to improve the health status, challenges and opportunities for the future health of the Indonesian people.(Christiawan 2021:96) Pemerintah menilai Undang-Undang Nomor 36 Tahun 2009 tentang Kesehatan kurang The government considers Law Number 36 of 2009 concerning Health to be less anticipatory in facing social and technological changes, so it is urgent that it be corrected and perfected. Therefore, the use of the Omnibus Law method is considered more appropriate to improve Law Number 36 of 2009 concerning Health.(Hidayat 2023) The revision of Law Number 36 of 2009 using the Omnibus Law method has apparently caused a polemic among health professional organizations. Five health professional organizations, such as the Indonesian

Doctors Association, Indonesian Dentists Association, Indonesian Midwives Association, Indonesian Nurses Association, and Indonesian Pharmacists Association criticized the revision of Law Number 36 of 2009. They considered that the revision of the Health Law using the Omnibus Law method was not urgent, lack of transparency, can threaten public health and safety, and ignore community rights in the health sector, including quality health facilities, adequate services, etc. (Iskandar 2023a:3646)

Even though there are pros and cons regarding the revision of the Health Law using the Omnibus Law method, the People's Representative Council still ratified Law Number 17 of 2023 concerning Health. Law Number 17 of 2023 is a new law that regulates the health system in Indonesia. (Wijayanti 2023). However, this law is considered to have caused problems because its formation did not involve community participation and was a denial of the mandate of the Indonesian constitution. The public should be involved in participating in the design of the new health law. (Salman 2015) The process of forming legal products that is not transparent and does not provide space for the public to express their aspirations is clearly not in accordance with the laws and regulations in force in Indonesia. (Iskandar 2023a:3646)

Liberalization of Health Services in the New Health Law

The implementation of Law Number 17 of 2023 concerning Health has been criticized by many groups. According to Achmad Nur Hidayat, Public Policy Observer, the People's Representative Council no longer serves the interests of the community, but serves the interests of capital owners. The New Health Law is not intended to improve the quality of public health, but to provide a way forward for the health industry and capital owners. This New Health Law contains elements of liberalization which have high risks for the health of the Indonesian people. (ID 2023) During the discussion, some people's representatives agreed and some other people's representatives did not agree with the ratification of the New Health Law. According to Edhie Baskoro Yudhoyono, Chair of the Democratic Faction, the government has an obligation to allocate a budget for the health sector in the form of mandatory spending so that health in Indonesia becomes better, more advanced and classier. (2023) Meanwhile, according to Jazuli Juwaini, Chair of the Prosperous Justice Party Fraction, the elimination of mandatory spending is a reduction in government responsibility in the health sector. (Anon t.t.) The enactment of the New Health Law was used as an investment area for the reason of improving the quality of public health services. Liberalization dominates the health sector. Many people doubt the realization of health services. Because investors are always oriented towards profits and losses, it is feared that people will suffer losses. (Situmorang 2023) This is because the New Health Law seems liberalizing because it shifts the authority, duties and responsibilities of professional organizations. (C. Indonesia 2023)

The group that agrees with liberalization states that liberalization means reducing the role of government and expanding the role of the private sector. Countries that have not yet liberalized will receive a lot of intervention from foreign parties which will hinder their development. (Kay dan Thompson 1986) Meanwhile, groups who disagree with liberalization state that liberalization is directly related to global phenomena. Because the state-centered economic system was transformed into a free market economic system. This is considered a new form of colonialism and liberalism that attacks the wealth of third world countries. This has proven to impoverish society. (S 2002:16–18) Profit-oriented health services have resulted in hospitals that were originally social function-oriented becoming business-oriented. (Zaini dkk. 2020:7455) Currently health services tend to be liberal because everything is up to the market. Capital owners open profit-oriented health services. The hospital has acted commercially to maintain its existence. This reality occurs in the health service system in Indonesia. (D, Saraswati dan Z, Zulfa 2015:13) Ironically, liberalization in the health sector has resulted in differences in services for poor patients. For example, complicated administrative services, long service, and so on. (Lestari 2010) In addition, there is an obligation to pay a down payment for poor patients before receiving health services at the hospital. (Zaini dkk. 2020:7456) In fact, the quality of service in hospitals is an important factor in fulfilling people's rights to health, including poor patients. (D, Saraswati dan Z, Zulfa 2015:14)

Efforts to liberalize the health sector started with foreign loans. Reform policies are driven by the International Monetary Institute through the promotion of liberalization and privatization of the health sector. Poor people certainly cannot accept the liberalization of the health sector. Liberalization is

strengthened by regulations and managerial systems to ensure that all policies in the health sector run well. (Carroll 2010:89–95) The International Monetary Institution uses very authoritative policies throughout the world to encourage liberalization efforts in the health sector, even though there is little evidence that liberalization can provide solutions to improve health problems. (Babb dan Kentikelenis 2017:75–82) Developed countries issue various world trade policies, determine which countries can get money loans, pressure various countries to implement deregulation, carry out privatization, and implement liberalization. (Mustafainah 2004:14) Then remove the concept of public goods and replace it with individual responsibility. Pressuring poor communities to find their own solutions to the lack of health services, education and social security, then blaming communities for their laziness. (Martinez dan Garcia t.t.)

The liberalization of the health sector is seen in the reduction of the government's role and the government's inability to take full responsibility for the management of health services. Governments in many developing countries rely on private institutions or organizations that support the provision of health services. Liberalization of services as an answer to problems of inefficiency and productivity of health service quality. (Ayuningtyas 2009:118) Liberalization of the health sector has been aggressive in recent years. This is proven by the rapid growth of private hospitals compared to government hospitals. (Cahyandari 2015) Private hospitals with international labels are emerging, as are hotels. Ironically, many local governments are starting to allocate funds to build profit-oriented hospitals. Hospitals tend to be commercial towards patients rather than carrying out social functions. (Waitzkin, Jasso-Aguilar, dan Iriart 2007:205–27)

International trade in health services continues to experience growth in many countries. Many countries want to attract consumers from other countries through a combination of tourism and healthcare. International trade in health services includes semi, medium and high value added services which include not only modern health services, but also traditional medicine. Indonesia, which is a member of the World Trade Organization (WTO) and the General Agreement on Trade and Services (GATS), must prepare itself to compete against fellow member countries. Therefore, it is important to revise the Health Law using the Omnibus Law method to simplify regulations in the health sector. Furthermore, GATS as an agreement in the field of international trade aims to expand the level of liberalization in the services sector. (Bagiastra 2023b:34)

Government Responsibility in Health Services for the Indonesian People After the Enactment of the New Health Law

The enactment of Law Number 17 of 2023 aims to provide a new direction for regulating the health system in Indonesia. (Wijayanti 2023b:17) This law seeks to create a more inclusive, prevention-oriented and high-quality health system. (Barthos dan Luturmas 2023) However, the substance of Law Number 17 of 2023 is being questioned because mandatory spending in the health sector has been removed. (Ulya dan Santosa 2023) Budi Gunadi Sadikin, Minister of Health, explained that the elimination of mandatory spending in the health sector was due to a program approach, not a spatial approach. Then the government received many reports of inappropriate use of the health budget. (C. N. N. Indonesia 2023) The government could give various reasons for eliminating mandatory spending in the health sector. However, mandatory spending funds in the health sector are needed to finance programs to achieve stunting targets, programs to eliminate leprosy, preparation of facilities and infrastructure, and so on. The elimination of mandatory spending in the health sector is considered to no longer require mandatory limits that must be met by the government for the allocation of health funds. (Kesuma 2023) The elimination of mandatory spending on the health budget shows that the government is abandoning its responsibility to ensure people's health. The government functions only as a regulator for corporate interests. Finally, the Indonesian health service will open the tap as much as possible for incoming foreign investment in order to obtain an adequate budget. (Putri 2023) The change in government responsibility in fulfilling the people's right to health has created legal problems, because the elimination of mandatory spending on health in the law is not in line with the Indonesian Constitution and other laws and regulations. (Yanwardhana 2023) Apart from that, eliminating mandatory spending in the health sector is a form of eliminating the government's responsibility in the health sector. (Ulya dan Meiliana 2023)

The people have high hopes for the government to safeguard national interests. Therefore, the government should be responsible for fulfilling the right to health of the Indonesian people. Fulfilling the right to health

of the Indonesian people must not be left to private companies. This consideration is based on the idea that the formation of a law relating to the fulfillment of the right to public health should prioritize national interests. Although the design and ratification of a law cannot be perfect. (Iskandar 2023b:3646) Discussion regarding responsibility for health services is a serious issue. The government is responsible for realizing people's health services which are a guarantee of international human rights. If the government does not carry out its responsibilities in providing health services for the Indonesian people, then the government is deemed to have violated human rights or international law. If the State does not take responsibility for these violations, then that responsibility will be taken over by the international community. (Firdaus 2016:94)

The state should be responsible for its people. Hernadi Affandi explained that in the context of legal responsibility, the state is the most important party in fulfilling the right to health based on constitutional orders. Then, in the context of economic responsibility, the state is responsible for providing a budget for health services and health facilities in the State Revenue and Expenditure Budget. (Affandi 2019:43–44) The government plays an important role in the health sector. The government can focus on improving the health system regarding health worker education, prevention efforts, health services, and distributing quality health workers evenly throughout Indonesia. (Putra 2024:132) Sustainable public health development cannot be implemented without a health budget. The government needs a large health budget to finance the entire health service system and finance public health service facilities. (Ahyuni dan Sutjipto 2023:26) Therefore, the government is obliged to provide health services to its people and prepare a health budget for every Indonesian citizen. (Huraerah 2015)

The Indonesian Constitution has mandated the government's responsibility in providing health services to its people. Article 28 H paragraph (1) and Article 34 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. These two articles regulate that every person has the right to a good and healthy living environment and the right to obtain health services. To realize this, the State responsible for providing adequate health service facilities. To realize this constitutional mandate, Law Number 36 of 2009 was created which contains mandatory spending in the health sector. (Ruslandi dkk. 2020:86) The Preamble to the Indonesian Constitution also mandates the government's responsibility in providing health services to its people. The goals of the Indonesian State, namely: Protecting the entire nation and the bloodshed of Indonesia, Advancing general welfare, and Smartening the life of the nation. (Purba dkk. 2023:582)

Legal protection of the right to obtain health services for the community is part of the implementation of the protection of human rights mandated by the Indonesian Constitution. Therefore, implementing health development based on the spirit of the constitution is an effort to implement human rights norms, namely the right to health. However, the State is obliged to fulfill the three rights to health, namely: respecting the right to health, protecting the right to health, and fulfilling the right to health. (Taufik 2019:770–71) The enactment of Law Number 17 of 2023 which eliminates mandatory spending in the health sector is clearly a form of ignoring the mandate of the Indonesian constitution and has implications for hampering health transformation efforts, negating the government's obligation to allocate a budget for the health sector, and potentially not achieving national health indicators. (Putra 2024:132) Indonesia as a member country of the United Nations is committed to realizing the fulfillment of the people's right to health. The Indonesian government is responsible for realizing health services for its people. (Mardiansyah 2018:229) Therefore, the Government must return to the principles of a welfare state. Liberalization of health has contaminated the state's ideology, because Indonesia prioritizes social welfare. (Imadasari 2013) Health policy should be in accordance with the ideals of the founding fathers of a country with the Pancasila ideology. (Yamin 1959)

Conclusion

The government uses the Omnibus Law method in Law Number 17 of 2023 concerning health to answer various community problems in the health sector and strengthen regulations in the health sector. However, Law Number 17 of 2023 gives the impression of liberalization because it shifts professional organizations' authority, duties, and responsibilities. Health services are liberalized because everything is up to the market. Capital owners open profit-oriented health services. The hospital has acted commercially to maintain its existence. Implementing Law Number 17 of 2023 is problematic because mandatory spending in the health

sector has been removed. Law Number 36 of 2009 requires mandatory spending in the health sector from the State Revenue and Expenditure Budget. The absence of mandatory spending in the health sector shows that the government and the People's Representative Council have ignored the mandate of the Indonesian Constitution, which guarantees people's health services. The Indonesian constitution has mandated the government's responsibility to provide health services to its people. Article 28 H paragraph (1) and Article 34 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The elimination of mandatory spending in the health sector is a form of ignoring the mandate of the Indonesian constitution. Liberalization of health has contaminated the state's ideology because Indonesia prioritizes social welfare. Health policy should follow the ideals of the founders of a country with the Pancasila ideology. Therefore, it is essential to submit a judicial review of the health law, which requires mandatory spending in the health sector to realize the government's responsibility to provide people's health services.

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