

Legal Politics of Establishing a Health Bill with the Omnibus Law Method

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ABSTRACT

Omnibus law is a new method of changing a legal product in Indonesia. Likewise in regulations in the health sector. The government, through a body that does have the authority to prepare legal products, decided to change legal products in the health sector with the Omnibus law method. There will be at least 15 health law products revamped in the 2023 legislation program in the health sector. Over time, various polemics in the formation of the Health Bill with omnibus law turned out to trigger polemics in the community, especially for related parties such as the health worker profession that exists in Indonesia. This study aims to analyze the politics of law in the formation of the Health Bill using the omnibus law method. The type of research used in this research is normative legal research. The approach used is a statutory and conceptual approach. The results of the study that the direction of legal politics will be closely related to health. Health development is directed at increasing the awareness, willingness, and ability to live a healthy life for everyone in order to realize the highest degree of public health, as an investment for the development of socially and economically productive Human Resources (HR). Then, the legal product of the Health Bill with omnibus law is directed to the fulfillment of the right to health as an integral part of the existence of human rights where the state has an obligation to fulfill and protect the right to health.

ABSTRAK

Omnibus law menjadi metode baru dalam perubahan suatu produk hukum di Indonesia. Begitupula pada regulasi di bidang Kesehatan. Pemerintah lewat badan yang memang memiliki kewenangan guna melakukan penyusunan produk hukum, memutuskan untuk merubah produk hukum di bidang kesehatan dengan metode *Omnibus law*. Setidaknya akan terdapat 15 produk hukum Kesehatan yang dirubah dalam program legislasi 2023 di bidang Kesehatan. Seiring berjalannya waktu, ragam polemik pembentukan Rancangan Undang-Undang Kesehatan dengan *omnibus law* ternyata memicu polemik di masyarakat khususnya bagi pihak-pihak yang terkait seperti profesi tenaga kesehatan yang eksis di Indonesia. Penelitian ini bertujuan guna menganalisa politik hukum dalam pembentukan Rancangan Undang-Undang Kesehatan dengan metode *omnibus law*. Jenis penelitian yang digunakan dalam penelitian ini ialah penelitian hukum normatif. Pendekatan yang digunakan ialah pendekatan perundang-undangan dan konseptual. Hasil penelitian bahwa arah pembangunan politik hukum akan erat kaitannya dengan kesehatan. Pembangunan kesehatan diarahkan kepada peningkatan atas ke kesadaran, kemauan, dan kemampuan hidup sehat bagi setiap orang agar terwujud derajat kesehatan masyarakat yang setinggi-tingginya, sebagai investasi bagi pembangunan Sumber Daya Manusia (SDM) yang produktif secara sosial dan ekonomis. Kemudian, produk hukum Rancangan Undang-Undang Kesehatan dengan *omnibus law* diarahkan kepada pemenuhan hak atas kesehatan sebagai bagian integral dari adanya hak asasi manusia yang mana negara memiliki kewajiban guna memenuhi serta melindungi hak atas kesehatan tersebut.

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I. INTRODUCTION

The government, which is now led by President Joko Widodo, stated that currently the regulatory conditions in Indonesia are experiencing hyperregulation which actually hinders various aspects such as communication, investment, to the fulfillment of the right to health. Indonesia is indeed a country that has many regulations. Until 2022, there are 42,161 regulations owned by Indonesia. Furthermore, based on data from the Ministry of Law and Human Rights (Kemenkumham), the number consists of 17,468 ministerial regulations, 15,982 regional regulations, 4,711 regulations of non-ministerial government agencies (LPNK), and 4,000 central regulations. This amount does not include the regulations made by the Government at the regional level (Rizaty, 2022). This is actually a problem in its implementation in society, it is not uncommon to find overlapping regulations that do not even provide aspects of legal certainty itself as well as the problem of sectoral egos of uncontrollable regulatory formation, so that the problem of the manufacturing process that does not involve the community so that the legal products formed give birth to rejection from the community. Simplification through the omnibus law framework is certainly considered an appropriate step. Omnibus law is a method that focuses on simplifying the number of legal products because of its nature to revise or repeal many legal regulations at once (Busroh, 2017).

The same is true of regulations in the health sector. It is known that the Government is currently working on a Health Bill (hereinafter referred to as the Health Bill) which is discussed using an omnibus law that must be able to answer all aspects of problems in society regarding health today, such as aspects of the problem of the high number of stunted children, health services that are still not optimal, and rejection from health professional organizations in Indonesia. Furthermore, the formulation of provisions for the Health Bill is included in the 2023 National Legislation Program and which in its discussion has experienced a tug-of-war between the Legislative Body and Commission XI of the House of Representatives. Both parties consider it most entitled to discuss the Health Bill on the grounds that health falls into a sector that is a shared responsibility.

Health is an aspect that is indeed a basic need for humans, therefore health is included in the rights for everyone who must be protected and become the responsibility of the state through the fulfillment of the legal certainty rights of the Health Law (Afifah & Paruntu, 2015). In Indonesia, in order to improve the welfare of the community, it is necessary to have the role and involvement of government through public services in order to meet the basic needs of each person such as health, education, and also other basic needs (Khariza, 2015). The importance of health as a fundamental human right has received recognition and guarantees from international law as in Article 25 of the Declaration of Human Rights as well as in Article 12 (1) of the Ecosob Rights. This right to health includes the right to a healthy and decent life and work, the right to get health services, and special attention to mothers and children as vulnerable people (Indar et al., n.d.).

The national health insurance is an overview of the state in providing social protection, which has been regulated what is the obligation and responsibility of the state in order to fulfill the guarantee (Sunggono, 2009).

The guarantee of national certainty is to provide certainty and protection of social welfare for all, in the concept of the welfare state, the state is responsible for the realization of the welfare of its people, by mixing dealing with the affairs of its citizens from the moment of human birth until man dies there is a side of the life of citizens that is not disturbed by the government (Ardinata, 2020). The theory of positive basic knowledge of the State is not an end in itself, but rather an institution created and maintained by the society Providing affirming services. then society itself The right to service, the obligation of the State to provide. The position of the state as a large organization in terms of fulfilling human rights obligations should realize the fulfillment of human rights for everyone without exception. With the fulfillment of human rights, it will naturally create a just and prosperous society so that all forms of problems over the criminalization of human rights that occur in the country can be reduced (Yustina et al., 2020).

Various changes in the context of thinking about the implementation of health development are unavoidable. In general, health development only refers to efforts to treat diseases, as well as health recovery, then shift to the implementation of health efforts without discrimination with an emphasis on disease prevention efforts, as well as improving health services. This paradigm is known in health circles as the healthy paradigm. As a logical consequence of the acceptance of the healthy paradigm, all activities must be oriented towards health insights, the maintenance of the continuity, as well as the improvement of the quality of individuals, families, and communities and also the environment, and inherently maintain, and improve quality, equitable, and affordable health services and encourage people's independence to live healthy lives.

The theoretical framework in this study is about the legal politics of development from the Health Law using the omnibus law method itself. The politics of law is what makes the law To achieve the goals of the state, the objectives of the state itself are clearly regulated in the Constitution of the Republic of Indonesia, namely: a). Protecting the entire nation and all spilled blood in Indonesia b). Progress of general benefits; c). Enriching the life of the nation; d). Carrying out the commandments of the World is founded on freedom, lasting peace, and justice. To realize the ideals of a legal state, legal politics must be guided by the values of Pancasila as the basis of the state (Siti Mahmudah, 2012). Mahfud M.D stated that the political configuration will affect the legal creation that will be born. In practice politics often intervenes in the law. Mahfud M.D said that legal politics is a legal policy direction that is made legally by the state against laws that will be enforced or not for the purposes of the state (M.D, 2018). Legal politics is a set of concepts and principles that form the outline and basis of a plan in the execution of a job, leadership, and the way of being (M.D, 2018). Legal politics is a set of concepts and principles that become the outline and basis of plans in the implementation of a job, leadership, and ways of acting in the legal field.

Then, the politics of law in the context of health is interpreted as a legal policy means choosing ideals about the law especially about health law and striving with all available might to achieve the ideals about that health law. It can also be said that legal politics is about the direction of legal development, especially health law. The legal product is the political product, the result of the attraction of various political forces incarnated in the

legal product. In this connection, Satjipto Rahardjo stated that the law is an instrument of political judgment or will, so that lawmaking is loaded with certain interests, and thus the field of lawmaking becomes a terrain of dissolution and struggle of interests (Rahardjo, 2002). Every legal product produced by the legislature must be able to accommodate the aspirations of the community, so that the legal product can be effective in society so that it can achieve from the ideal of the law itself, which is to ensure a sense of justice in society.

Observing the problems around the politics of law in the health sector in Indonesia, government policies often cause problems between health service providers both with patients and in the health service providers themselves (in terms of organization or operational management). Although the Health Act has regulated the problem, the problem still arises so that there is a suspicion that there is a widespread neglect in the field of public health. This study focuses on the national policy side of Indonesia's health sector, especially the politics of law (M.D, 1999). Political studies the main objective of law is to examine the direction of law developed by the state in order to achieve national goals, which can be the creation of new Laws and replacing old ones. The political urgency of the Law that makes legislation consists of two things Namely, as a justification for the need for regulation to make laws, and determining what will be translated In legal sentences, into the substance of the product of the Act read in Chapters, Articles, and Verses. These two points are very important Due to the existence of legislation, and the formulation of terms whether the "bridge" between law and politics, the stage of political implementation of the legal system is at the stage of normative implementation of legislation (Dhikshita et al., 2022).

II. RESEARCH METHODS

In answering what is the problem in this research, a research method is needed to get the right and scientifically appropriate answer. Normative juridical methods were selected in this study (Butarbutar, 2018). Research using the normative juridical method seeks to explain the direction of legal political policy from regulations regarding health by using the omnibus law method through a statutory approach and a conceptual approach (Ibrahim, 1999). The statute approach is used as a basis for analyzing laws and regulations on health which are used as a legal basis in the formation of omnibus law. Research using normative juridical methods seeks to explain the direction of legal political policy from regulations on health, especially focusing on the study of legal regulations using the omnibus law method. To support this research, the authors used primary legal sources, secondary legal sources, and tertiary legal sources. The primary source of law is with regard to all legal rules made by the state that are binding in nature, especially regarding rules relevant to research. Then, secondary and tertiary materials are used by researchers in addition to primary legal sources, such as books, journals and dictionaries. The data and materials in this study are then collected and then combined with qualifications that are relevant to the discussion in this study. Furthermore, this research uses 2 (two) types of approaches, namely through a legal approach and a conceptual approach. The statute approach is used as a basis for analyzing legislation in the health sector which is used as a legal basis in the formation of omnibus law. The conceptual approach is used as a reference in analyzing the characteristics and characteristics of the health omnibus law

III. RESULT AND DISCUSSION

Currently, as a foundation in managing health is Law Number 36 of 2009 concerning Health. On the basis of consideration of part a of the Law on Health, it is said that health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as referred to in Pancasila and the 1945 Constitution of the Republic of Indonesia.

Health is part of human rights and is the responsibility of all parties. The law on Health that currently exists is seen as time to be changed. The omnibus law method is seen as a suitable method of overcoming changes and refinements rather than the Law on Health itself. In addition to having weaknesses so that it is difficult to make implementing regulations, it also cannot function because it is seen as less anticipatory in the face of social and technological changes. This Law is therefore urgent to be improved and refined. This proposal is based on various considerations such as related to the issue of services of the Social Security Organizing Agency (BPJS) Health which is still experiencing many shortcomings in services to the community and there is discrimination (Hidayat, 2023).

Referring to the Annex to Presidential Regulation Number 18 of 2020 concerning the National Medium-Term Development Plan 2020-2024 (Hereinafter referred to as the National RPJM 2020-2024), it states that the health sector is included in the category of human resource development which is the focus of the 2020-2024 National RPJM. The lack of optimal health service referral system is seen from the large number of patient queues. Puskesmas and private first-level health facilities (FKTP) have not been able to optimally act as gate keepers. The vacancy of drugs and vaccines and the irrational use of drugs still occur, high dependence on imports of raw materials for pharmaceutical preparations and medical devices, and drug and food supervision systems have not been optimal. Inequality in health system performance between regions is also still high, for example low immunization coverage in eastern Indonesia. Accredited health care facilities and health workers are still piling up in Java-Bali and urban areas.

It is further explained in the Annex to the Presidential Regulation on the 2020-2024 National RPJM, that strengthening primary health care services by encouraging increased promotional and preventive efforts, supported by innovation and the use of technology, by: improving maternal, child, family planning (KB) and reproductive health, accelerating the improvement of community nutrition, improving disease control, cultivating healthy living behaviors through the Healthy Living Community Movement, strengthening basic and referral health services, fulfilling and improving the competence of health workers, fulfilling and increasing the competitiveness of pharmaceutical preparations and medical devices, increasing the effectiveness of drug and food supervision, and strengthening health governance, financing, research and development.

The Politics of Law in the Framework of Health

In this regard, talking about legal politics cannot be separated from development in the health aspect, because legal politics is an effort to implement national legal development, of course, it cannot be separated from the overall national development policy, which is outlined in the National Medium-Term Development Plan 2020-2024, which is the basis for national development efforts in various fields, including the health sector.

Health development is aimed at increasing awareness, willingness, and ability to live a healthy life for everyone in order to realize the highest degree of public health, as an investment for the development of socially and economically productive Human Resources (HR) (Yuningsih, 2014). Development, especially those with long-term dimensions, is an adequate platform to accommodate conceptualized ideas in a measurable, appropriate and effective manner according to regional objective conditions. Herein lies the importance of the meaning of the Long-Term Development Plan (RPJP) as mandated by Law Number 25 of 2004 concerning the National Development Planning System and Law Number 32 of 2004 concerning Regional Government as amended in Law Number 23 of 2014. Law Number 25 of 2004 emphasizes that national development is carried out based on democracy with the principles of togetherness, justice, sustainability, environmental insight and diversity by maintaining a balance of progress and national unity (As in Article 2 (1)). Thus, a plan is needed that can direct all components of society towards the achievement of national goals (Piris, 2014).

Development in a broad sense covers all aspects of people's lives and not only aspects of economic life, therefore the term economic development is actually not appropriate because we cannot build the economy of a society without concern the development of other aspects of people's lives (Kusumaatmadja, 2006). The goal of national long-term development for the period 2005 to 2025 (as in Law Number 17 of 2007 concerning Indonesia's National Long-Term Development Plan for the period 2005 – 202) is to create a developed, independent, and just nation as a foundation for the next stage of development towards a just and prosperous society in the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Indonesia's National Long-Term Development Plan for the period 2005 – 2025 is a necessity for the State of Indonesia as a guiding star as well as a guide for the government of the unitary State of Indonesia to realize national ideals and goals as implied in the preamble to the Constitution of the Republic of Indonesia (Nadir & Wardani, 2018).

Furthermore, as in the national vision of long-term development, namely the creation of healthy, intelligent, productive, and noble people and an increasingly prosperous society in sustainable development driven by an economy that is increasingly developed, independent, and equitable throughout the region supported by the provision of adequate infrastructure and the increasingly solid unity and unity of the nation imbued with a tough character in the container of the Unitary State of the Republic of Indonesia which held with a democracy based on the values of Pancasila] as a guide in the life of society, nation, and state and upholding the rule of law. In the RPJMN, there are 7 development missions. The mission related to health is the fourth mission, namely "Realizing a high, developed and prosperous quality of human life." In NAWA CITA, the priority agenda that is in accordance with health is similar to the fourth mission, namely "Improving the quality of life of Indonesian people."

In order to realize the mandate of the Indonesian Constitution, the House of Representatives of the Republic of Indonesia passed the Law on the National Social Security System, dated October 19, 2004. The enactment of the Law on the National Social Security System has several programs of the Indonesian state social security system which are formed in an integrated manner in one body established by the government (Alfitri, 2012). Following the passage of the law, the government then designed various policies

aimed at protecting the right to health for all Indonesians (Sayekti & Sudarwati, 2010). In 2009, the Government promulgated the Law on Health, followed by the House of Representatives which enacted the Law on the Social Security Administration Agency on November 25, 2011. The passage of the Law on the Social Security Implementation Agency has ushered in the Indonesian state into a new era of the main pattern of social security. The enactment of the Law on the Social Security Administration Agency shows the implementation of the mandate of the Law on the National Social Security System (Sandiata, 2013).

The national health insurance explains the concept of mutual cooperation. Poor people who cannot pay and have limited access to health are assisted by people who are capable of improving the health status of all people (Ardinasyah & Oktapani, 2020). The ratification of the Law is based on the spirit and efforts to realize the health degree of Indonesian citizens (Yustina, 2015).

The Politics of Law in the Omnibus Law

As stated by Mahfud MD, the politics of law include: First, the construction of laws that inculcate the creation and renewal of legal materials in order to suit the needs. Second, the implementation of existing legal provisions including affirmation of agency functions and guidance of law enforcement (MD, 2001). As a legal state, of course, Indonesia in the formation of laws and regulations (in casu of the Law on Health) cannot be separated from the politics of law. According to M. Mahfud MD, legal politics is the official policy (legal policy) of the state about the law that will be enforced or will not be enforced (making new rules or repealing old rules) to achieve state goals (Dhikshitaa et al., 2022). Sri Soemantri also interpreted the meaning that seeing the relationship between law and politics in Indonesia is the same as the journey of a train locomotive that goes off its tracks (Hadoyo, 2018). A responsive legal product is a creation of a democratic political configuration, every formation of a legal product is never separated from the process of political configuration (Iskandar et al., 2021), is no exception in the formation of the Bill on Health which is also inseparable from the political configuration.

In terms of the formation of the Health omnibus law bill, as stated by the Member of the Legislative Body (Baleg) of the DPR RI Ledia Hanifa Amaliah gave her advice regarding the Health omnibus law bill. He was of the view that the Omnibus Law on Health should lead to the construction of a better health system in the system of services to the community. The omnibus bill on Health law will contain at least 15 (fifteen) Laws on Health Professions and Health itself. Of course, of the 15 (fifteen) existing laws made into one Article which will contain new materials and new content materials in the laws and regulations. There are several laws that are made into one, namely, among others, the Law on Nursing, the Law on Health Workers, the Law on the Practice of Medicine, the Law on the Social Security Implementation Agency, the National Social Security System Law, and so on.

The existence of the omnibus law method has captured the attention of the public because of the purpose of the omnibus law to replace the previous existing Law with a new Law. The new Act was created as a legal umbrella for all relevant legal provisions and could be cross-sectoral in nature. The omnibus law is a format for the formation of a comprehensive Law by participating in regulating the material of other Laws that are interrelated with the substance regulated by the Law that is amended or formed (Prabowo et al., 2020).

The revision of the Health Bill with the omnibus law method in its implementation has become a polemic in itself, especially for the health profession. Criticism of the Health Bill using the omnibus law method came from 5 (five) professional health worker organizations that exist in Indonesia, such as the Indonesian Doctors Association (IDI), the Indonesian Dentists Association (PDGI), the Indonesian Midwives Association (IBI), the Indonesian Nurses Association (PPNI), and the Indonesian Pharmacists Association (IAI). As stated by representatives of the 5 (five) professional organizations of health workers, they considered that the formation of the Health Bill using the omnibus law method lacked transparency and was made secretly. Furthermore, IDI is of the view that the Health Bill with the omnibus law method has no urgency value compared to the Telemedicine Bill and the Outbreak Drug and Vaccine Manufacturing Bill. The Health Bill with this omnibus law method rejected is the centralization of regulations. The settings here are the settings that occur in the health field, yes. Such as the regulation for the recognition of the competence of health workers which started from the ratification of the STR (Registration Certificate) which is usually carried out by the KKI (Indonesian Medical Council), now taken over by the minister. In addition, the reason for the Health Bill with the omnibus law method can threaten public health and also public safety which is handled with health workers who have high morals and ethics, the lack of health workers is one of the things caused by the failure of government is not the fault of professional organizations, and the Health Bill with the omnibus law method that ignores some rights that should be accepted by the public in the form of health Starting from quality, decent health facilities and also others.

The establishment of the Health Bill using the omnibus law method that does not involve community participation is a necessity and denial of the mandate of the Indonesian constitution. Participatory democracy is expected to be more guaranteed for the realization of responsive legal products, because the community participates in making and has the birth of a law, including in the health sector (H.R. Otje Salman S, 2013). The process of forming legal products that are not transparent and do not give space to the public to convey their aspirations and apply the laws of laws and regulations that are the result of a "cat-and-mouse" process is something that is incompatible with the Pancasila Legal System that aspires to the development of national law through democratic and nomocratic means.

Based on Article 5 letter g of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, it explains that the formation of laws and regulations must be carried out based on the principle of forming good laws and regulations, one of which in letter g is stated to be the principle of openness (Seta, 2020). In his explanation, it is explained that in the formation of laws and regulations starting from planning, drafting, discussing, ratifying or determining and promulgating is transparent and open. Thus, all levels of society have the widest opportunity to provide in the formation of laws and regulations. The form of openness in the formation of laws and regulations is carried out in every process, namely planning, drafting, discussing, ratifying or determining and promulgating (SY & Irawan, 2022). Likewise with what is the problem in the preparation of the Health Bill with the omnibus law method demanded by the community, which in this case is the professional organization of health workers.

The people have high hopes for the government to safeguard sovereignty and national interests. The government must take responsibility for fulfilling the right to health of the Indonesian people. Do not let the fulfillment of the right to health of the Indonesian people

be handed over to privately owned organizing bodies. This consideration is based on the idea that the establishment of an Act relating to the fulfillment of the right to health of the people must prioritize sovereignty and national interests.

Indeed, the publication of a variety of legal products is not a complete legal product. Because, the preparation of a legal product cannot be perfect. Therefore, Jimly Asshiddiqie criticized the Social Security Administration Agency Act, Jimly Asshiddiqie proposed that the Social Security Administration Agency Act be revised immediately as many issues arose in the governance run by the Social Security Administering Agency. Jimly Asshiddiqie's proposal needs to be responded to by the government and the House of Representatives of the Republic of Indonesia. The reason is that this view has certainly gone through various in-depth studies. Then, the fulfillment of the right to health is a form of human rights as stated in the Constitution of the Republic of Indonesia. The issue of fulfilling the right to health is not only in the management of the Social Security Organizing Agency, but also in the formation of various other regulations.

IV. CONSLUSION

Health development is aimed at increasing awareness, willingness, and ability to live a healthy life for everyone in order to realize the highest degree of public health, as an investment for the development of socially and economically productive Human Resources (HR). In line with what is contained in the RPJMN Development Mission, the mission related to health is the fourth mission, namely "Realizing a high, developed and prosperous quality of human life." In NAWA CITA, the priority agenda that is in accordance with health is similar to the fourth mission, namely "Improving the quality of life of Indonesian people."

In this study, the authors are fully aware of the lack of review literature in the object of this study. This is because the object chosen by the researcher is still relatively new and only looks towards the future of the enactment of this regulation on health. Researchers hope that further research can be carried out by of course following the direction of legal political developments which from time to time increasingly show developments in order to align with goals and life in the nation and state. In addition, it must be remembered that the aspect of health enters into human rights whose existence cannot be separated from the existence of the Indonesian State as a State that recognizes and protects Human Rights, including in the health sector.

The politics of law in the context of health is defined as a legal policy means choosing ideals about the law especially about health law and striving with all available might to achieve the ideals about that health law. It can also be said that legal politics is about the direction of legal development, especially health law. Through this omnibus law method, people have high hopes in order to fulfill the right to proper health and according to their needs. In addition, the Government is also required to be responsible for fulfilling the right to health of the Indonesian people.

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