

# Problematics and Challenges of Post-Post Health Personnel Issue of Law No 17 Of 2023 about Health

Marzuki Yusuf<sup>1</sup>

## Article Info

Page : 205-209

ISSN : 3026-5290

Vol 2 No 1 2024

## Corresponding Author

Marzuki Yusuf, Health Law Masters  
Student, Panca Budi University, Medan  
Email:Marzukiyusuf@gmail.com

## Abstract

This research examines regulatory changes in the health sector in Indonesia, specifically related to Law Number 36 of 2009 and Law Number 17 of 2023 concerning Health. The new Health Law is expected to improve the health service system and provide stronger legal protection for health workers. However, there is controversy and criticism that has emerged from various groups, especially from the Indonesian Doctors Association (IDI), regarding several articles that are considered controversial. These articles include the potential for criminalization of medical personnel and the ease with which foreign health workers can practice in Indonesia. This research uses descriptive analytical methods with a normative juridical approach to analyze data from existing laws and regulations. The research results show that although the law offers a clearer and more comprehensive framework, there is a need to revise and clarify some articles to reduce confusion and potential conflicts. The importance of synergy between the government, health workers and professional organizations is also emphasized to ensure the fulfillment of the right to health of the Indonesian people and improve access and quality of health services.

**Keyword:** Problems, Health Workers, Health Law

## 1. INTRODUCTION

Recognized as part of human rights, which is also part of national ideals. In carrying out health development, we must pay attention to the principles and objectives set out in Article 2 and Article 3. Article 2 states that health development must be based on the principles of humanity, balance, benefits, protection, respect for gender rights and obligations, non-discrimination, as well as religious norms. The principle of protection means that health development must provide legal protection and certainty for providers and recipients of health services. Article 1 number 7 in Law Number 17 of 2023 defines health workers as individuals who serve in the health sector, have a professional attitude, knowledge and skills through higher education, and for certain types require authority to carry out health efforts. According to data from the National Commission on Violence Against Women, there were 9 cases of violence against female nurses in the 2022-2023 period, three of which occurred in the workplace by superiors and co-workers. This violence is carried out by patients, coworkers, or strangers. The Indonesian National Nurses Association (PPNI) reported 8 cases of violence against nurses throughout 2020-2021. These cases of violence, especially those that occurred during the early stages of handling the COVID-19 pandemic, show that doctors and health workers need serious protection from the government. Another problem often faced by health workers is complaints from patients and their families, which often result in medical disputes to legal action.

Therefore, legal protection for health workers in health facilities is very important, considering that they are the front guard in health services for the community, in accordance with Indonesia's development vision as stated in the 1945 Constitution. Along with socio-economic and demographic changes, Indonesia is faced with various health challenges, including increasing disease burden, unequal access and health service policies. Indonesia is faced with big challenges in increasing the accessibility and quality of health services for all levels of society. The 11 regulations include law number 4 of 2019 concerning midwifery, law number 6 of 2018 concerning health quarantine, law number 38 of 2014 concerning nursing, law no. 36 of 2014 concerning Health Workers, Law no. 18 of 2014 concerning Mental Health, Law no. 20 of 2013 concerning Medical Education, Law no. 44 of 2009 concerning Hospitals, Law no. 36 of 2009 concerning Health, Law no. 29 of 2004 concerning Medical Practice, Law no. 4 of 1984 concerning Infectious Disease Outbreaks, Law Number 419 of 1949 concerning the Hard Drugs Ordinance (Staatsblad 1949 Number 419). This change was welcomed as an important milestone in health regulation in Indonesia, however the health law still leaves a number of problems that require further understanding and solutions. In fact, many parties will

actually object if this Health Law is passed. The ratification of the Health Law caused polemics and became a concern for many groups of people in Indonesia. Especially regarding the objects of the regulation itself, namely medical personnel and other health personnel.

## 2. RESEARCH METHODOLOGY

This research uses a descriptive analytical method with a normative juridical approach (Fuqoha, 2020). Analytical descriptive, namely describing applicable laws and regulations linked to legal theories. The normative juridical approach is by reviewing or analyzing secondary data in the form of applicable laws and regulations (Sudrajat, 2023). Secondary data used in this research are primary legal materials such as national legal sources, secondary legal materials such as materials that provide explanations of primary legal materials in the form of documents (Sriono et al., 2021). Data collection in this research was carried out using library research and document study. Secondary source data or materials in the form of the Criminal Code, Law Number 17 of 2023 concerning Health, and other legal and regulatory sources related to medical disputes. These references and rules were obtained via *Google Scholar*. The results of the research are presented in the form of this article. The data obtained was collected and analyzed using qualitative normative methods. Normative because this research focuses on regulations that apply as positive legal norms that regulate legal issues regarding health workers, especially the medical profession.

## 3. RESULT AND DISCUSSION

Of course, with the passing of this law there was a lot of controversy. Of course, medical workers have their own challenges and problems. Law Number 36 of 2009 concerning Health is the legal basis for health development efforts in Indonesia. In the second paragraph, it is stated that to achieve national goals, sustainable and comprehensive development is needed, including in the health sector. This development must be carried out in a directed and integrated manner, as envisioned by the Indonesian people. Health is recognized as part of human rights, which is also part of national ideals. In carrying out health development, we must pay attention to the principles and objectives set out in Article 2 and Article 3. Article 2 states that health development must be based on the principles of humanity, balance, benefits, protection, respect for gender rights and obligations, non-discrimination, as well as religious norms. The principle of protection means that health development must provide legal protection and certainty for providers and recipients of health services. Health is a human right that every individual has, and the responsibility to fulfill it belongs to all parties. The polemic regarding Law Number 36 of 2009 concerning Health has attracted the attention of many groups in Indonesia. Many believe that the law is no longer relevant to current developments and is unable to overcome problems in health services, so it needs to be updated. The urgency of this reform is also related to the implementation of the Health Law which is considered less than optimal and has many overlapping regulations. For this reason, members of the People's Representative Council of the Republic of Indonesia (DPR RI) proposed a new draft law (RUU) that is more comprehensive and based on health as a human right. The aim is to provide extra legal protection for health workers. Unfortunately, in its preparation, the DPR did not involve health professional organizations such as the Indonesian Doctors Association (IDI), which sparked polemics and demonstrations from health workers. IDI urges that discussions be carried out again to ensure that the Health Bill reflects justice and welfare for all health workers and meets the needs of the Indonesian people. Discussions regarding this bill have raised pros and cons, with the Ministry of Health and the DPR RI supporting it as a step to improve the health service system for the better. This bill is also considered a means of preparing to face future health crises. However, there are concerns that professional organizations such as IDI have large interests that could monopolize the health care system.

The Indonesian Doctors Association (IDI) and other parties opposing the Health Bill argue that the substance of the bill does not reflect the real needs of health problems and asked the Ministry of Health to stop discussing it. According to IDI, the Health Bill is not urgent to be passed immediately, and it is better to improve the implementation of the existing Health Law. Several articles in this bill are considered controversial. Article 314 paragraph (2) states that each group of medical and health personnel can only form one professional organization, which is seen as a form of weakening and government intervention towards professional organizations. Article 462 paragraph (1) regulates that medical or health personnel who commit gross negligence that causes serious injury to a patient can be sentenced to prison for up to three years, but does not specify the form of negligence in question, so that it could give rise to arbitrary demands from the

patient. In addition, Article 235 excludes foreign medical personnel who have practiced for at least five years abroad or have special skills to work in Indonesia after undergoing a competency evaluation, but does not clearly explain the necessary conditions. This is an important issue because it concerns the competence of health workers and public safety. Article 239 paragraph (2) gives the Minister of Health the authority to grant practice approval for foreign medical personnel, which is considered too broad, especially because the current educational background of the Minister of Health does not come from the medical field, but rather engineering. Health workers' attitudes towards the latest Health Law may vary. Some of them accepted it well because this law provides clear guidance in carrying out their duties and responsibilities. They consider this law a step forward in improving the health system in Indonesia. However, there are also health workers who have a critical view of this law. They argue that several articles in the law are still open to different interpretations and give rise to confusion. For example, the article regarding the authority and responsibilities of health workers has not been explained in detail, giving rise to uncertainty in carrying out their duties. In fact, there have been those who have held peaceful demonstrations voicing their rejection or asking for the law to be reviewed so that understanding of the articles that raise the pros and cons can be discussed. There are several issues that have arisen related to the latest Health Law. One of them is the issue of regulations regarding the use of technology in health services. The law does not yet provide clear guidelines regarding the use of telemedicine or other remote health services. This is a concern for health workers who use this technology in their daily practice. The controversy over Law Number 17 of 2023 concerning Health consists of several main points:

1. **Elimination of Mandatory Spending** : This law removes the article that regulates mandatory spending, aka mandatory spending. Previously, this article stipulated an allocation of 5% of the State Revenue and Expenditure Budget (APBN) and 10% of the Regional Revenue and Expenditure Budget (APBD) excluding salaries. This elimination aims to ensure that mandatory spending is regulated based on government budget spending commitments, so that certain strategic programs in the health sector can run optimally.
2. **Opening Opportunities for Foreign Health Workers** : This law opens opportunities for foreign health workers to work in Indonesian health facilities. Previously, the rule requiring foreign health workers to speak Indonesian had been removed. This raises concerns that the allocation of foreign health workers is only for upper middle class patients.
3. **Change in STR Status (Registration Certificate)** : This law changes the STR status of health workers and medical staff, which currently requires renewal every five years, to be valid for life, like a diploma. The STR will continue to be issued by the Council, which will become an integrated unit of the Indonesian Medical Council (KKI) or the Indonesian Health Personnel Council (KTKI).
4. **Criminalization of Medical Personnel** : Article 440 paragraph (1) of the Health Law states that any medical personnel or health worker who commits negligence which results in a patient being seriously injured will be punished with a maximum imprisonment of 3 years or a maximum fine of IDR 250 million. If the negligence made results in death, then each medical worker or health worker will be punished with a maximum imprisonment of 5 years or a maximum fine of IDR 500 million. This raises concerns that this law will trigger the criminalization of doctors and health workers.

Apart from that, another issue that emerged was related to the implementation of sanctions for violations of the Health Law. Some health workers are concerned that the sanctions given are too harsh and do not take into account actual conditions and situations. The newly passed Health Law aims to provide additional legal protection for health workers from potential criminalization. However, there are concerns regarding unclear articles regarding the definition of negligence, which could provide an opening for unfounded claims from patients. Professional organizations emphasize the important role of the Medical Discipline Honorary Council (MKDK) in assessing whether the actions of health workers constitute negligence before any legal action is taken, to ensure that the action violates professional ethical standards or not. Other significant changes include a STR that is valid for life and no need for a recommendation from a professional organization to obtain a SIP. In addition, this law reduces the regulatory role of professional organizations such as the Indonesian Doctors Association (IDI), by placing the Indonesian Medical Council (KKI) and the Indonesian Health Personnel Council under the Ministry of Health, which was previously independent. This law also regulates the practices of foreign health workers in Indonesia, with the aim of

improving access and quality of health services. Although the Health Law is designed to provide protection and improve services, there are concerns from professional organizations that this could weaken their role in the supervision and regulation of health professions.

The newly passed Health Law caused various reactions, similar to the response to the Job Creation Law which also used the Omnibus Law method. This Health Law is considered to make it easier for foreign doctors to practice in Indonesia, but the Indonesian Doctors Association (IDI) is concerned that this law favors investors and ignores the rights of the community, medical personnel and health workers regarding legal protection and patient safety. Article 248 paragraph 1 of the Health Law states that foreign medical personnel who can practice in Indonesia are those with specialist and sub-specialist status as well as health workers with a certain level of competency who have taken part in a competency evaluation. Apart from that, article 251 regulates that foreign medical and health personnel can work in Indonesia if there is a request from a health service facility as needed. For almost 20 years, professional organizations and specialist associations have carried out their mandate and experience in maintaining and improving the quality and competence of their members. Therefore, the Ministry of Health should collaborate with existing professional organizations and associations, and integrate them into platforms such as Satu Sehat, SDMK, and Pelataran Sehat. Although the new Health Law provides a clearer and more comprehensive framework for health workers, it requires revision and clarification of several articles that still cause confusion so that health workers can carry out their duties better and avoid different interpretations. Despite all the controversy that has occurred, this latest health law is considered a step forward in improving the health system in Indonesia, and is expected to become a foundation for medical personnel in providing quality services to the community. With synergy between legal experts, health stakeholders and the government, it is hoped that optimal solutions can be found to ensure the fulfillment of the health rights of the Indonesian people and improve the overall quality of health services.

#### 4. CONCLUSION

Based on the discussion regarding Law Number 36 of 2009 and Law Number 17 of 2023 concerning Health, it can be concluded that efforts to update regulations in the health sector in Indonesia are still facing various challenges. The new Health Law has generated various reactions from various groups, both support and criticism. Even though it aims to improve the health service system and provide more legal protection for health workers, there are concerns regarding several articles that are considered controversial, such as the potential criminalization of medical workers and the ease for foreign health workers to practice in Indonesia. Criticism also came from professional organizations such as the Indonesian Doctors Association (IDI), which felt that several substances in the Health Law did not reflect real needs in the field and demanded greater participation in its discussion. The elimination of mandatory spending and changes to STR status which are valid for life also raise pros and cons among health workers. Nevertheless, it is hoped that this law can become the basis for improving the quality of health services in Indonesia. It is hoped that the importance of revising and clarifying several articles can overcome confusion and reduce the potential for conflict in the future. It is hoped that the synergy between the government, health workers and professional organizations can produce optimal solutions to fulfill the health rights of the Indonesian people and improve access and quality of health services as a whole.

#### REFERENCE

- Adisasmito, Wiku. *Analysis of the Journey of the Draft Health Law (RUU Health)*. Depok: Department of Health Administration & Policy FKM UI, 2008.
- Agustina, S., *et al*. "Perceptions of Law Enforcement Officials Regarding the Implementation of the Principle of Lex Specialis Derogat Legi Generali in the Criminal Justice System". *Legal Issues* 41, no. 4 (October 2012): 540-548.
- Anggono, Bayu Dwi. " *Omnibus Law* as a Technique for Forming Laws: Opportunities for Adoption and Challenges in the Indonesian Legislative System." *Rechtsvinding Journal*. Vol. 9.No. 1 (2020). Pg.
- Bakhtiar, M.Z., Rahman, S., & Busthami, D.S. (2022). Legal Protection for
- Chaeria, Y., Busthami, D., & Djanggih, H. (2020). Implications of the Position of Medical Personnel (Informed Consen) on Hospital Accountability. *Petitum*, 8 (April 1), 1-19.
- Harahap, RA (2022). *Health Ethics and Law: Revised Edition*. Merdeka Kreasi Group.

- Huda, K., & Huda, M. K. (2021). Legal Protection for Nurses for the Delegation of Authority from Doctors in Carrying Out Medical Procedures for Suturing Wounds in Hospital Emergency Rooms. *Journal of Health Law and Ethics* , 98-121.
- Johnson, Sandra H., et al. *Health Law and Bioethics: Cases in Context* . New York: Wolters Kluwer Law & Business, 2018.
- McClay, Caitlin. "Mediation in Medical Treatment: A More Effective Way to Manage Disputes." *Catholic University Law Review* 68, no. 3, (Summer 2019): 525-550.
- Montgomery, Jonathan. *Introduction to Health Law* . London: Routledge, 2019.
- Patients for medical procedures carried out by nursing staff outside their authority. *Journal of Lex Generalis (JLG)* , 3 (4), 788-798.
- Poernomo, Bambang. *Health Law* . Yogyakarta: Aditya Media, No Year.
- Purwaka, Tommy Hendra. *Legal Research Methodology* . Jakarta: Atma Jaya University Publishers, 2007.
- Republic of Indonesia. *Law Number 17 of 2023 concerning Health* . Jakarta: State Secretariat, 2023.
- Republic of Indonesia. *Law Number 36 of 2009 concerning Health* . Jakarta: State Secretariat, 2009.
- Suparman, Eman. *Health Law* . Jakarta: Rineka Cipta Publishers, 2020.
- Timon, A. (2020). Responsibilities of a Democratic Legal State in Providing Health Services. *Soumatara Law Review*, 3(1), 18-29