

A Critical Review of Indonesia's Health Law and Its Implementing Regulations: Strengths and Challenges

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Abstract: This research explores the impact of Indonesia's Health Law Number 17 of 2023, particularly the removal of mandatory spending provisions and the introduction of Government Regulation Number 28 of 2024, which has led to significant public discourse. Utilizing normative legal methods with a conceptual and statutory approach, the study evaluates the alignment of these changes with the Indonesian Constitution, specifically Article 28H paragraph 1 and Article 34, as well as their compatibility with societal norms and values. The findings indicate that the abolition of mandatory spending may hinder equitable access to healthcare, despite the intention to enhance fiscal flexibility through program-based budgeting. Additionally, Article 103(4)(e) of the regulation, which addresses the provision of contraceptives for adolescents, has raised concerns due to its ambiguity and perceived misalignment with cultural and moral standards in society. This research highlights the critical need for policies that are not only legally sound but also contextually appropriate and responsive to societal needs, offering insights into the challenges of health policy reform in Indonesia.

Keywords: Health Law; fiscal policy; reproductive health

1. Introduction

Health is one of the basic human needs that has a fundamental role and is considered the most important part of life according to the Universal Declaration of Human Rights by the United Nations (UN) in 1948 which was also signed by Indonesia, and the mandate in the 1945 Constitution, Article 28 H paragraph (1) Jo. Article 34 paragraph (3) states that health is a basic right inherent in every individual and all citizens. Therefore, the state should have a legal obligation to ensure that this basic right is fulfilled.¹ To realize the mandate of the constitution, regulations in the health sector have been established through Law Number 36 of 2009 concerning Health, one of which regulates mandatory spending, namely the obligation of the central and regional governments to allocate a budget for public health services.² Article 171 of Law Number 36 of 2009 concerning Health explicitly regulates the concept of mandatory spending, namely requiring the central government to allocate at least 5% of the State Budget (APBN) and provincial, district, or city governments to allocate at least 10% of the Regional Budget (APBD) for the health sector.

The Problems in the health sector still require priority intervention, especially related to the inequality and inadequacy of health infrastructure³ However, in 2023, the Omnibus Law on the Health Bill was passed into a Law that replaced the old Health Law, namely Law Number 17 of 2023 concerning Health, which changed several provisions in the old Health Law, such as the digitalization of health services, the elimination of mandatory requirements for health workers to join certain professional organizations, provisions that facilitate the entry of foreign health workers to practice in Indonesia, and other changes including eliminating provisions related to mandatory spending. According to the Indonesian Minister of Health, Budi Gunawan Sadikin, the elimination of the policy was because he thought that mandatory spending did not have a significant impact on the health of the Indonesian people and based on his observations that countries that implement mandatory spending policies in the health sector, such as Cuba and the United States, the average life expectancy of their population is relatively low compared to countries that do not implement mandatory spending such as South Korea and Japan.⁴ However, based on World Bank data for 2023, Indonesia's Health Budget is far behind other middle-income countries, and in the conditions of uneven public health development in Indonesia, with the elimination of mandatory spending, it is feared that the health budget will have no reference,⁵ and it is very risky to eliminate the allocation of the health budget in the central and regional budget priorities, and the Health Law should be able to ensure that the government retains full authority

1. Wili Fragcana Putra, "Menakar Penghapusan Mandatory Spending Di Bidang Kesehatan Pasca Disahkannya Undang-Undang No.17 Tahun. 2023," *Jurnal Kultura* Vol 9 No 2 (2024): 126.

2. Wili Fragcana Putra. 125.

3. Septiani Djohan Ari Saptono dan Dicky Iranto, "Analisis Pengaruh Anggaran Pendidikan, Anggaran Kesehatan, Dan Kemiskinan Terhadap Indeks Pembangunan Manusia Di Indonesia," *Indonesian Journal of Economy, Business, Entrepreneurship and Finance* Vol 3 No 3 (2023): 449, <https://doi.org/10.53067/ijebef.v3i3>.

4. Wili Fragcana Putra, "Menakar Penghapusan Mandatory Spending Di Bidang Kesehatan Pasca Disahkannya Undang-Undang No.17 Tahun. 2023."

5. Tempo.com, "Anggaran Kesehatan RI Lebih Rendah Dari Negara Tetangga, Ekonom Bicara Risikonya," 2023, <https://www/tempo.co/ekonomi/anggaran-kesehatan-ri-lebih-rendah-dari-negara-tetangga-ekonom-bicara-risikonya-170205>.

and responsibility in determining policies in the health sector.⁶

In addition, the enactment of Law Number 17 of 2023 also resulted in the formation of implementing regulations in the form of Government Regulation Number 28 of 2024 concerning Implementing Regulations of Law Number 17 of 2023 concerning Health, which sparked debate among the public due to the formulation of Article 103 paragraph (4) point “e” of the Government Regulation which was rejected by various parties. The formulation of Article 103, paragraph (4), point “e” states that reproductive health services for school-age children and adolescents include the provision of contraceptives. This has become controversial, as it is perceived as legalizing contraceptives for adolescents and raises concerns that such provisions may encourage premarital sex or sexual relations outside of marriage among teenagers. This is seen as inconsistent with the religious and social norms prevalent in Indonesian society. In fact, regulations under the law should be drafted with careful consideration of social conditions and serve as a tool to meet the legal needs of society.⁷

According to the spokesperson for the Ministry of Health in his statement, he explained that the provision of contraceptives is intended for teenagers who are already married or married. However, the regulation does not explain in detail whether the provision of this device is intended for all students or teenagers, both unmarried and married, or is only limited to teenagers or students who are married. This lack of clarity has given rise to various speculations in society so that Article 103 paragraph (4) point “e” is considered open to multiple interpretations.⁸ Meanwhile, in making laws and regulations, confusion and ambiguity must be avoided,⁹ and formulated completely and clearly so as not to give rise to double understanding.¹⁰ In this way, the regulations made can be easily understood by the public and implemented, and the objectives of the regulations can be achieved. Regarding the formulation of Article 103 paragraph (4) letter “e”, according to the spokesperson for the Ministry of Health, it emphasizes that early marriage increases the risk of maternal and child mortality, as well as stunting in children born so that the main target for contraceptive services is fertile couples and fertile age groups at risk. However, it is irrelevant and not urgent because there has been a decrease in the number of child marriages in Indonesia based on data in the 2022 Indonesian Annual Report to UNICEF from 10.35 percent to 9.23 percent.¹¹

This raises oddities, especially in the reproductive health service point that includes the provision of contraceptives for school-age children. What should be the main priority in maintaining the health of the reproductive system of school-age children and adolescents is the prevention of deviant behavior, such as the

6. Andi Kurniawan, “Menakar Penghapusan Mandatory Spending,” *LAN RI*, 2023, <https://lan.go.id?p=14429>.

7. Ahmad Redi, *Hukum Pembentukan Peraturan Perundang-Undangan Indonesia* (Indonesia: Sinar Grafika, 2018).

8. Putri Mayang Sari Aisyah Rahmaini Fahma, Evi Yulia Fitri, “Analisis PP No 28 Tahun 2024 Tentang Penyediaan Alat Kontrasepsi Bagi Pelajar Dan Remaja Menurut Masalah Mursalah,” *Jurnal Wasatiyah: Jurnal Hukum* Vol 4 No 2 (2024): 58, <https://doi.org/10.70338/wassatiyah.v5i2.167>.

9. Ahmad Redi, *Hukum Pembentukan Peraturan Perundang-Undangan Indonesia* (Jakarta: Sinar Grafika, 2018).

10. Ahmad Redi.

11. UNICEF Indonesia, “Laporan Tahunan Indonesia 2022,” UNICEF Indonesia, 2022, <https://www.unicef.org/indonesia/id/laporan/laporan-tahunan-2022>.

free association between both the opposite and same-sex, through the provision of comprehensive information and appropriate education. In legal realism, understanding of law is not limited to legal texts or documents. Realism emphasizes the evolution of each part of the law by reminding of its consequences.¹² Oliver Wendell Holmes argued that law is a prediction of judicial action based on facts, and legal certainty can only be achieved by considering social facts in depth, rather than simply adhering to the major premise.¹³ The existence of a discrepancy between the provisions of the new Health Law and the social reality in Indonesia shows whether the formation of a regulation has implemented the principles of forming good Legislation, especially the “principle of implementation” where every Formation of Legislation must take into account effectiveness. The legislation in society, both philosophically, sociologically, and juridically. In this context, the theory of legal realism is relevant to bridge the differences between written law and prevailing social conditions.

This study focuses on the main controversial legal issues with the enactment of Law Number 17 of 2023 concerning Health and how Government Regulation Number 28 of 2024 concerning the Implementing Regulations of Law Number 17 of 2023 concerning Health adds to the complexity of the problems in implementing the Health Law. This study also seeks to offer an analytical framework to overcome the various challenges that arise in the implementation of the regulation by focusing on relevant and solution-oriented aspects related to the mandatory spending policy and the implementation of the Implementing PP of the Health Law which are contrary to the values and norms prevailing in Indonesia and are not following the needs of the community, especially in the distribution of health development. This study is important to conduct considering that health is part of Human Rights (HAM) and must be realized in the implementation of quality and equitable health development for the community and the distribution of health development in each region.

This study aims to answer the question of how the changes in policy provisions in the health sector after the enactment of the 2023 Health Law regarding the mandate of the 1945 Constitution Article 28 H paragraph (1) Jo. Article 34 paragraph (3) and how is the implementation of PP No. 28 of 2024 as the implementing regulation of the 2023 Health Law regarding the values and norms that apply in Indonesia based on the theory of legal realism?

Previous studies have examined various aspects of health policy in Indonesia, including the provision of contraception for adolescents, highlighting the challenges posed by social and cultural norms that influence public acceptance. The study conducted at UIN Malang focuses on the abolition of *mandatory spending* in Indonesia's Health Law No. 17 of 2023 from the perspectives of *Maqāṣid Asy-Syarī'ah* and constitutionality, while also proposing a more effective and sustainable health financing model.¹⁴ Meanwhile, other research evaluates the policy on contraceptive

12. Eddy O.S Hiariej, Zainal Arifin Mochtar, *Dasar-Dasar Ilmu Hukum Memahami Kaidah, Teori, Asas, Dan Filsafat Hukum* (Depok: Rajawali Pers, 2024).

13. Zainal Arifin Mochtar.

14. Muchammad Zidan Taifiqi, “Constitutional Analysis of the Elimination of Mandatory Spending in Law Number 17 of 2023 on Health Maqāṣid Asy-Syarī'Ah Perspective” (Thesis, Universitas Islam Negeri Maulana Malik Ibrahim, 2024).

provision for adolescents in Government Regulation No. 28 of 2024 through the lens of *masalah mursalah* in Islamic law, emphasizing the regulation's alignment with the principle of public welfare.¹⁵ Additionally, a study titled *Analysis of Government Regulation No. 28 of 2024 on the Implementation of Health Law No. 17 of 2023 Regarding the Provision of Contraceptives for Students and Adolescents* examines the legal aspects of this policy.¹⁶ However, previous research has generally overlooked an in-depth analysis of the legal implications and its constitutional conformity, while also lacking a comprehensive application of legal realism to assess the effectiveness of this policy within Indonesia's social, cultural, and political contexts.

Therefore, this study becomes urgent due to the changes occurring in Indonesia's health sector following the enactment of Law Number 17 of 2023 concerning Health and the implementation of Government Regulation Number 28 of 2024 as its implementing regulation. These changes affect not only the regulation of health services and the allocation of the health sector budget but also alter the paradigm in public health management, particularly regarding the removal of mandatory budget expenditures and provisions concerning the supply of contraceptives for school children and adolescents. Consequently, it is necessary to evaluate the alignment of this new policy with the 1945 Constitution of the Republic of Indonesia and the prevailing legal principles in Indonesia. The policies contained in the new Health Law need to align with the country's fundamental values and provide an understanding of how the elimination of mandatory budget expenditures can impact budget allocation and affect the efficiency and effectiveness of health services in various regions. Thus, this study contributes to the formation of health policies based on legal principles. Through an in-depth analysis of the legal aspects governing health policies, this study can offer constructive recommendations for the improvement and refinement of health regulations in Indonesia.

2. Methodology

This normative legal research aims to provide an overview of the changes in provisions within the health sector following the ratification of the new Health Law, namely Law Number 17 of 2023 on Health, and the implementation of its derivative regulation, Government Regulation Number 28 of 2024 concerning the Implementing Regulations of Law Number 17 of 2023 on Health. The study focuses on the urgency and alignment of these changes with the 1945 Constitution and existing norms in Indonesia.

The primary rationale for utilizing normative legal research lies in the fact that this study aims to examine the legal provisions outlined in the new Health Law and its derivative regulations, as well as analyze the related legal norms and their

15. Aisyah Rahmaini fahma, Evi Yulia Fitri, and Putri Mayang Sari, "ANALISIS PP NO 28 TAHUN 2024 TENTANG PENYEDIAAN ALAT KONTRASEPSI BAGI PELAJAR DAN REMAJA MENURUT MASLAHAH MURSALAH," *Wasatiyah: Jurnal Hukum* 5, no. 2 (December 28, 2024): 55-66, <https://doi.org/10.70338/wasatiyah.v5i2.167>.

16. PARDI HILALA, "ANALISIS PERATURAN PEMERINTAH NOMOR 28 TAHUN 2024 TENTANG PERATURAN PELAKSANAAN UNDANG-UNDANG NOMOR 17 TAHUN 2023 TENTANG KESEHATAN TERKAIT PEMBERIAN ALAT KONTRASEPSI BAGI SISWA DAN REMAJA," *GANEC SWARA* 19, no. 1 (March 1, 2025): 49, <https://doi.org/10.35327/gara.v19i1.1292>.

compatibility with the Constitution and existing legal frameworks in Indonesia. Normative legal research seeks to explore the legal structure, normative aspects, and legal basis underlying the enacted policies, ensuring that such policies conform to established legal principles and norms.

To address the research questions, this study employs a conceptual approach and a legislative approach. The conceptual approach is used to analyze policy changes introduced by the New Health Law, particularly the elimination of mandatory spending and the implementation of its derivative regulation concerning the provision of contraceptives for school-age children and adolescents. Meanwhile, the legislative approach examines the legal framework governing mandatory spending and the provision of contraceptives for school-age children and adolescents, as well as the broader provisions related to the legislative process in Indonesia.

Additionally, this study will take into account the influence of social, cultural, legal, and political factors in analyzing these policy changes. The social and cultural factors are crucial for understanding how the public receives and responds to the policy, particularly with respect to the provision of contraceptives for school-age children and adolescents, which may be influenced by Indonesia's cultural and moral values.

3. Discussion

3.1 The Critical Notes Towards f Health Law Number 17 of 2023

The Health Omnibus Law has a crucial role in carrying out the mandate of Article 28 H paragraph (1) juncto Article 34 of the Constitution of the Republic of Indonesia in 1945, namely: Everyone has the right to live a prosperous life in birth and mind, to reside, and to get a good and healthy living environment and the right to obtain health services as referred to in Article 28 H paragraph (1) and the State is responsible for providing health service facilities and facilities proper public services. The right to health is an absolute right and closely related to the welfare of the community, guaranteeing the right to a good, healthy living environment, and the right to access health services. The state plays a role in organizing structured, comprehensive, and equitable health efforts.

Therefore, the government is trying to organize a comprehensive and integrated health system, to ensure that health services are not only available but can also be accessed equally by all levels of society.¹⁷ This strategy includes efforts to improve health infrastructure, train health workers, and develop policies that are responsive to local needs. Thus, the goal of achieving optimal health for each individual can be realized, while overcoming inequities in access to quality health services.

The ratification of Law Number 17 of 2023 by the House of Representatives, as an omnibus law on health regulations, not only contains

17. Titon Slamet Kurnia, *Derajat Kesehatan Optimal Sebagai HAM Di Indonesia*, (Bandung: PT Alumni, 2007).

the issue of improving health service facilities for citizens, but far from that, the government must understand that the priority of developing the health system is solely aimed at providing adequate protection and health services for the community. In this latest health law, there are several new provisions that were not previously regulated in the old health law.

First, the latest regulations provide several policy changes for medical personnel and health workers. The new health law contains provisions regarding Legal Protection for Health Workers, in Article 229 it is stated that health workers in carrying out their practice have the right to obtain legal protection based on laws and regulations. Legal protection for health workers is one of the milestones of change in viewing health workers as entities that are vulnerable to facing medical disputes. Furthermore, the latest health law also offers the option of resolving medical disputes through restorative justice which provides easy, fast, and low-cost dispute resolution to avoid the impact of large and fatal losses.

Moreover, the new Health Law opens-up opportunities for the emergence of new professional organizations, which will have a positive impact on the level of competence and credibility of each professional organization, as well as to prevent monopoly by one particular health organization. The latest Health Law simplifies the process for foreign health workers to practice in Indonesia, which aims to address the shortage of health workers, especially in frontier, outermost, and disadvantaged areas (or the so called 3T). On the one hand, easier access for foreign health workers to practice in Indonesia will definitely have an impact on the absorption of domestic health workers, so the government must ensure that there is a limit on the number of foreign health workers to be able to continue to prioritize the absorption of domestic health workers. The new Health Law also changes the requirements for practicing health workers, by making the Registration Certificate (STR) the only document required for practice through an integrated system by the government and valid for life.

Second, related to TeleHealth and Telemedicine, in the digitalization of health services. The presence of digitalization in the health system is expected to increase legal supervision in health service practices, thereby suppressing the emergence of illegal health services that are not licensed and preventing the risk of misuse of patient personal data and patient health history as well as malpractices in health services. The digitization of health services not only supports easy access to health services, but also to integrate national health services through the National Health Information System (SIKN) with the aim of creating a more efficient system and enabling remote consultation and diagnosis, thereby facilitating access for 3T areas and overcoming the limitations of health facilities.

Third, the latest health law, which regulates preventive and promotive health service efforts, is different from curative and rehabilitative health efforts that were the focus of the old health law. Preventive and promotive efforts include health prevention and improvement activities, which are carried out through health counseling, vaccinations, and periodic health checks with the

aim that health orientation is more about prevention than treatment.

Fourth, the elimination of mandatory spending is the most questionable policy and causes discord in society. The enactment of Law Number 17 of 2023 has had an impact on changes in the health sector, especially due to the elimination of mandatory spending.¹⁸ The latest Health Law has removed provisions regarding Mandatory Spending or the obligation to spend on the health sector/mandatory budget allocation for the health sector. Mandatory Spending was previously regulated in Article 171 of Law Number 36 of 2009 concerning Health, with a portion of 5% of the State Budget and 10% of the Regional Budget excluding salaries. Mandatory Spending is the obligation of the central and regional governments in allocating budgets for health services for the community so that the government can allocate budgets for development through priority sectors. This is in line with the recommendation of the World Health Organization (WHO) in the Abuja Declaration in 2001, for the government to allocate a budget of 15% for the health sector. Article 171 regulates the mandatory budget allocation for the health sector of at least 5% (outside salaries) from the State Budget and 10% of the Regional Budget for the health sector as a form of Mandatory Spending.¹⁹

The elimination of the mandatory spending provisions of the latest Health Law has sparked concerns that the government will not fulfill its obligations in providing health services to its citizens, because there is no longer a minimum threshold for the government to allocate funds for the health sector. Thus, it is considered an effort to reduce government responsibility in the health sector, so the elimination of spending must be considered a step backwards and a form of failure in carrying out the mandate of the Constitution. This means that there will no longer be mandatory limits that must be met by the government for the allocation of health funds, so this can lead to the potential for the state to be negligent in carrying out its responsibilities in the health sector. To be able to provide health services to people spread across the country, even at a minimum standard level, must consist of a large budget required. Therefore, mandatory spending in the State Budget and Regional Budget as a source of health financing is to ensure that health financing is adequate, on target, and used effectively and efficiently. The provision of this minimum budget is intended to ensure that health development is carried out in a sustainable manner to improve public health.

The elimination of mandatory spending in the health sector has the potential to hinder ongoing health transformation efforts. Health transformation efforts will not be realized without the consistency of the budget amount set by the government. In practice, efforts to transform the national health system encounter many obstacles caused by the government's

18. Inks h.m., "Mandatory Spending In the Health Law," 2023, <https://nasional.kompas.com/read/2023/08/13/07304821/tragedi-penghapusan-mandatory-spending-dalam-uu-kesehatan-yang-baru?page=all> (accessed January, 11, 2025).

19. Nur Indrawaty Lipoeto and Darmayanti, "Overview of the Fulfillment of Children's Rights and Supporting Factors in the Basic Health and Welfare Cluster in the Implementation of the Bukittinggi City Child-Friendly City Policy in 2019.," *Andalas Health Journal* 8 No 4 (2020), <https://doi.org/10.25077/jka.v8i4.1107>.

inconsistency in realizing the regulations and budgets that have been set. Transformation in the health sector requires a lot of funds to be able to expand access to health services, improve the quality of health services, and strengthen health infrastructure throughout the country, so that if mandatory spending is abolished, it will open up opportunities for budget allocations that are not in line with the goals of health transformation efforts.

This regulation is certainly detrimental to the quality of life of the community, especially for those who live in areas with inadequate health facilities and access to public health services such as health centers and Regional General Hospitals (RSUD). For example, one of the health issues that occurred at the Scholoo Keyen Hospital, South Sorong, West Papua, which was almost paralyzed due to the scarcity of medicines, medical materials used up and problems regarding delays in paying salaries for medical personnel.²⁰ From this, it is clear that the awareness to prioritize health in the regions is not evenly distributed. There are still many regions that have not made health a priority program financed by the APBD, so that without mandatory spending determined by the central government, the national health priority program is neglected by the local government. From the data recorded by CISDI, there are still 58 out of 514 districts/cities in Indonesia whose proportion of the health budget is below 10 percent in 2021, with the unequal distribution of allocations²¹ and the elimination of the Mandatory Spending policy risks increasing the number of individual expenditures (out-of-pocket) to access health services.²² The elimination of Compulsory Expenditure is very risky in eliminating the allocation of the health budget in the budget priorities at the central and regional levels, considering that public health is something intangible, unlike infrastructure programs or social assistance.²³

Meanwhile, mandatory spending should be used to reduce the problem of social and economic inequality in a region.²⁴ For example, in the Regency/City Budget in Papua Province which consists of at least 10% expenditure on health functions, at least 15% of special autonomy funds, and at least 25% allocation of General Allocation Fund (DAU) which is used for infrastructure development directly related to public service facilities in the health sector.²⁵ The General Allocation Fund (DAU) has a significant influence on the degree of public health which consists of indicators of health per 1000 population, life expectancy, and infant mortality rate. The effectiveness of mandatory spending

20. King Eben Lumbanrau and Quin Pasaribu, BBC News Indonesia 9 June 2023 Hospitals in the Papua region are 'almost paralyzed' and several patients have died due to scarcity of medicines and medical materials <https://www.bbc.com/indonesia/articles/cx8d040d18go>.

21. Press Release: CISDI Strongly Condemns the Ratification of the Health Bill: A Rushed and Non-Transparent Process, Amru Aginta Sebayang, July 11, 2023, <https://cisdi.org/siaran-pers/kecam-pengesahan-ruu-kesehatan>.

22. Policy Brief: Public Interest That Must Be in the Health Bill, <https://cisdi.org/riset-dan-publikasi/publikasi/dokumen/kepentingan-publik-yang-harus-ada-dalam-ruu-kesehatan>.

23. Andhi Kurniawan, *Measure Removal Mandatory Spending - LAN RI Measuring Deletion Mandatory Spending* (accessed January 13, 2025).

24. Ministry of Finance, Directorate General of Financial Balance, <https://djpk.kemenkeu.go.id/?ufaq=apakah-yang-disebut-dengan-mandatory-spending> (accessed, January 11, 2025)

25. Ahyuni, S. & Sutjipto, H. (2023). The effectiveness of mandatory spending on health functions and their impact on the degree of public health in Papua Province. *Social, Ecology, Economy for Sustainable Development Goals Journal*, 1(1), 24-42. <https://doi.org/10.61511/seesdg.v1i1.2023.158>.

on health functions in the DAU allocation shows that there is a partial influence on the degree of public health in Regencies/Cities of Papua Province.²⁶ In addition, mandatory spending on health allocation in the APBD has contributed positively to improving the quality of regional health, especially in equitable distribution of health which aims to prevent the emergence of health quality gaps between regions.

Even with the mandatory spending, the equitable distribution of health services is still far from expectations. The elimination of Mandatory Spending will expand the problems in the health sector, considering that Mandatory Spending is a priority in realizing health protection for the community. Coupled with the increasing burden of disease and complex health service needs, the elimination of mandatory spending can have a negative impact on the provision of health services for the community. Through adequate allocation of funds for mandatory spending in the health sector, health programs in general both at the national and regional levels can be implemented. Strengthen Mandatory Spending in the health sector will not only support the achievement of national health targets, but also create a health system that is more inclusive and responsive to society needs.

If mandatory spending is removed, it is possible that it will increase the burden of health costs borne by the community. In other words, that if the allocation of the minimum budget for health is getting tighter, the additional costs that must be incurred by the community to access health will increase. Improving the quality of health can no longer be expected from programs carried out by the central and regional governments. In addition, it will have an impact on the number of basic services in regional health facilities that are decreasing. For example, the provision of nutritious food to prevent stunting, the provision of access to medicines, assistance in financing membership contributions of the Social Security Administration Agency (BPJS), to health education programs.

The elimination of mandatory spending on the health sector in the long term is likely to be one of the main factors for the Government to fail to improve the level of the health index as part of the fulfillment of the Human Development Index (HDI) indicator.²⁷ In the long term, the elimination of mandatory spending opens up the potential for national health indicators to not be achieved, which will certainly have an impact on decreasing the quality of national health. The health sector is a field that is vulnerable to various risks, such as unequal human resources, inequality in quality and access to health, high costs, therefore the government should provide stimulus through adequate budget management and can be used in a targeted manner.

Mandatory spending contributes greatly to the realization of national health priority programs, so that the elimination of mandatory spending will later hinder many important programs that become National Health Indicators, including a decrease in stunting rates, a decrease in maternal and child health,

26. *Ibid.*

27. Ministry of Health, 24 Health Indicators in IPKM, 24 Health Indicators in IPKM – Sehat Negeriku (accessed January 13, 2025).

and an increase in maternal and infant mortality rates.²⁸ The government's obligation in allocating the health budget becomes important when the health problems that have been faced by Indonesia, such as reducing stunting, have not been resolved. According to data from the Ministry of Health, the national stunting prevalence in 2023 is 21.5% or exceeds the limit set by the World Health Organization (WHO), which is below 20%. Therefore, the government's commitment through Mandatory Spending to overcome the stunting problem is still needed, including when a large population is not comparable with the budget allocation in the health sector, it will not be adequate budget to improve the quality of public health.

Thus, the big question about the state's commitment to allocating funds for health services for citizens is questionable. The elimination of mandatory spending not only changes the health budget system, but also the health management system that must be used as best as possible to provide health services for citizens and solve health problems to support health development in Indonesia. Including when the government abolished mandatory spending, the government actually had to formulate new efforts to overcome inequality in access and quality of national health. It means, the government must continue to evaluate and curate the needs of each region in the allocation of the health budget, which of course will vary. Equitable distribution of quality and access to health is the government's homework when deciding to remove mandatory spending, not to widen the gap in quality and access to health between regions. The government is obliged to ensure that there are minimum budget provisions that must be fulfilled by each region to support national health priority programs while still adjusting to the needs of health programs in each region.

Although, it is undeniable that the abolition of the mandatory spending provision is caused by several factors, including policies made by the government, and the political and legal system that cannot be separated from the political aspect of the existence of political power or interests in the formation of laws.²⁹ In Article 409 of the latest Health Law, the provision of Mandatory was removed and replaced with the Health Sector Master Plan (RIBK) which directs the planning of health programs for the next five years at the central and regional levels. RIBK provides more flexibility in allocating the budget based on priorities and needs. The implication is that the Central Government and Regional Governments have the flexibility to determine the amount of budget for the health sector by focusing on strategic health programs and priorities to be achieved.

President Joko Widodo in the 2024 National Health Working Meeting (Rakerkesnas) held by the Ministry of Health stated that there is a need for long-term and medium-term health development plans, as well as the Health Sector Master Plan (RIBK) as a reference for the central government, local

28. Wili Fragcana Putra, "Measuring the Elimination of Mandatory Spending in the Health Sector After the Ratification of Law No. 17 of 2023."

29. Syahriza Alkohir Anggoro, "Legal Politics: Seeking a Number of Explanations," *Journal of Law Horizon* Vol 10 No (2019): 82.

governments, and the private sector in implementing health development.³⁰ Mandatory Spending will later be replaced by RIBK (Health Development Investment Framework), in line with the mandate of Health Law Number 17 of 2023. RIBK will change the paradigm in health planning from a “program follows the money” approach to a “money follows the program” approach.

The RIBK was prepared by the Ministry of Health based on the National Medium-Term Development Plan (RPJMN) as a strategic foundation for achieving future health goals. In this new paradigm, the health budget is no longer set at 5% or 10%, but is allocated according to the needs and priorities of the health program to be achieved. The RIBK is a national guideline for the central and regional governments in planning, budgeting, and implementing health programs in their respective regions. The Health Development Program in the current Health Law relies on the consolidation and integration of local and central governments to produce significant progress, by involving Bappeda in the preparation of the RIBK. Collaboration between the central and regional governments is interpreted to include policy commitments, budgets, human resources, systems, and data. This is necessary to ensure that risk factors are detected and controlled and prevent the burden of disease and death on the community.

In this RIBK, the government must ensure that the process of identifying and selecting priority programs in the health sector is on target and solves important and priority health problems. Through the preparation of the RPJMN, the Ministry of Health also conducts a continuous evaluation process that has been carried out by RIBK as it should be to support the new health concept, namely from handling sick people to efforts to keep the community healthy. The money follow program policy relies on coordination between the central government and local governments, to establish important health issues that are priorities and adequate budget allocation for public health. The money follow program policy will become an obstacle and have an impact on the stagnation of health quality and even a decrease in the quality of citizens' health services, when the government has difficulty ensuring priority health programs with health budget allocations, especially at the local government level. Local governments tend to have limited capacity and resources in implementing health programs, both those that are national priorities and those that are regional priorities themselves. The risk is that local governments cannot divert priority health budgets to other sectors, and there is a residual health budget that has no benefit for public health services or to support priority health programs.

The supervision process from the central government is one way that RIBK can still be implemented by local governments and must be followed by providing incentives for local governments to be able to adjust to the level of health quality and health needs in each region. This will add to health problems, if the funds follow the program listed in the RIBK to replace Mandatory

30. Aligning Central and Regional Health Development. Government Prepares Health Sector Master Plan (RIBK) - Sehat Negeriku Aligns Central and Regional Health Development, Government Prepares Health Sector Master Plan (RIBK) (accessed January 13, 2025).

Expenditure in the health sector, it will open-up the possibility of misallocation that leads to corruption or budget manipulation.

The government needs to implement the policies in the latest Health Law comprehensively. Efforts to improve and improve the quality of health and health development cannot be carried out only by relying on the planning process of priority health programs in the RIBK, but must be carried out through the improvement of the health system and health management as a whole, both at the central and regional levels. Health reform should be interpreted as the government's effort to encourage the improvement of the health service system and quality for citizens, including ease of access and quality assurance of health services in all health facilities, especially those organized directly by the state. In the health sector, welfare can be built through the country's efforts to provide broad access to health, such as building health facilities, providing affordable medicines, and developing effective health programs. The latest health law brings policy reform as well as providing challenges for the management of the national health system.

Both the central government and local governments are responsible and support each other in the implementation of the health programs contained in the RIBK. Not only the achievement of strategic programs in the health sector, but also supporting factors for the achievement of strategic health programs, such as health service facilities, quantity, distribution, and quality of medical and health personnel, service development programs, technology, and research in the health sector. Changes in health policy in Indonesia through the new Health Law must be a step forward for the government in the health sector, which is used to improve the quality and life expectancy of the people and ensure easy access to health for the Indonesian people, as one of the foundations to realize a Indonesia Emas 2045.

3.2 Multiple Interpretations of Article 103 paragraph (4) of Government Regulation (PP) Number 28 of 2024 Concerning Implementing Regulations of Law Number 17 of 2023 Concerning Health

The law has strictly regulated the behaviors and norms that should apply in society, aiming to ensure order and the fulfillment of rights—both for the community as users of health services and for health workers. The formulation of Article 103, paragraph (4), point “e” of Government Regulation Number 28 of 2024, which serves as an implementing regulation for Law Number 17 of 2023 on Health (hereinafter referred to as the Implementing Regulation of the Health Law), has sparked public debate. This provision states that reproductive health services for school-age children and adolescents include the provision of contraceptives, which has become a contentious issue.

The formulation is controversial because it is perceived as legitimizing the use of contraceptives for teenagers under the guise of reproductive health education. In drafting regulations, it is crucial to carefully consider the wording and definitions of each article. This is necessary to prevent ambiguities or

potential for multiple interpretations, ensuring that the public can easily understand the intended content of the regulation. The principle of legal fiction assumes that once a statutory regulation is enacted, everyone is considered to have knowledge of it (*presumptio iuris et de iure*). Consequently, the provisions become binding, and ignorance of the law does not exempt or excuse anyone from legal responsibility (*ignorantia juris non excusat*).

Multiple interpretations of regulations occur when an article or provision in a regulation has an unclear formulation, whether in terms of the object, subject, or grammar that is regulated, that it can give rise to various interpretations. This is certainly very dangerous because it contradicts the purpose and function of the law, namely to achieve legal certainty. An article that is open to multiple interpretations can create legal uncertainty and open up the potential for abuse in its application.³¹ In fact, these multiple interpretations arise from each person's different understanding of the law and legislation. The level of legal knowledge of the public, law enforcers and policy makers varies greatly.³²

The formulation in Article 103, paragraph (4), point "e" of the Implementing Regulation of the Health Law, which includes provisions regarding the distribution of contraceptives to school-age children and adolescents, has become a controversial issue in society. This controversy arises because the regulation's wording has the potential to be misinterpreted during its implementation. The explicit mention of contraceptive provision for school-age children and adolescents in Article 103, paragraph (4), point "e" has led to various interpretations. The government, as the regulatory body, has clarified that this provision should not be taken literally as stated in the article. The government interprets the article as applying only to married couples of reproductive ages, even if they are still in school or adolescents. In other words, the provision of contraceptives, in special cases, is intended for adolescents who are already married, as explained by the Minister of Health.

In Indonesia, teenage girls who become pregnant seem to face two primary options: marriage or abortion. Abortion itself is prohibited under Indonesian law, as stipulated in the Health Law No.36 of 2009. It is only permitted under specific circumstances, such as when there is a medical emergency that endangers the mother's life, when the fetus has a congenital disorder that is incompatible with life, or when the pregnancy result from rape. Consequently, in most cases teenage girls who become pregnant end up getting married. Additionally, certain school regulations in Indonesia expel pregnant students on the grounds that they have engaged in immoral behavior. In this context, the government's decision to provide contraceptives to teenagers should not necessarily be viewed as a negative policy. In the United States, for instance, state governments provide free contraceptives for teenagers, which

31. Rizal Irvan Amin dan Achmad, "Mengurai Permasalahan Peraturan Perundang-Undangan Di Indonesia," *Res Publica: Jurnal Hukum Dan Kebijakan Publik* Vol 4 No 2 (2020): 213, <https://doi.org/10.20961/respublica.v4i2.45710>.

32. Jakobus A. Rahajaan dan Sarifa Niapele, "Kajian Yuridis Terhadap Perkawinan Di Bawah Umur," *Public Policy: Jurnal Kebijakan Publik Dan Bisnis* Vol 2 No 1 (2021): 97, <https://doi.org/10.51135/PublicPolicy.v2.i1>.

are easily accessible through official websites. The U.S. government's primary goal with this policy is to reduce teenage pregnancies, and the initiative has been widely accepted in schools.

However, similar policies cannot be directly applied in Indonesia, as Indonesian laws must be rooted in the moral values of its society. *The American jurist, Lon L. Fuller (1902–78) famously developed a secular natural law approach that regards law as having an 'inner morality'. By this he means that a legal system has the specific purpose of 'subjecting human conduct to the governance of rules.'*³³ Fuller said that law has inner morality and there is a relationship between law and morality. Article 103 paragraph (4) of Government Regulation on Health Number 28 of 2024 ignores the inner morality that exists in society. This is what makes the regulation experience several rejections from society.

Legal Realism emphasizes understanding these contextual dynamics and practical challenges as well as the importance of social, political, and economic factors. Legal Realism encourages us to consider real-world applications and the societal forces at play. It is not just about legality but about the lived experiences and responses that shape the effectiveness of laws. In implementing Article 103 paragraph (4) of Government Regulation on Health Number 28 of 2024, the government should prioritize sex education for school children and adolescents rather than providing contraceptives for school children and adolescents which is an inappropriate part. The formulation of Article 103 paragraph (4) point "e" of the Implementing PP of the Health Law indicates that there are various interpretations, thus opening up opportunities for different meanings in its legal actions. Moreover, the formulation of the article is contradictory from the perspective of the social context in society. Multiple interpretations are feared that the provision of contraceptives for school-age adolescents will be a gateway for premarital sex or extramarital sex among adolescents.

BKKBN in 2024 stated that 60% of teenagers aged 16-17 years had had sexual intercourse. In the 19-20 age group, 20% had had sexual intercourse. Even among teenagers aged 14-15 years, 20% had sex, so the provisions in Article 103 paragraph (4) were established to address the number of marriages among teenagers to delay pregnancy due to the readiness of prospective mothers. The Coordinating Ministry for PMK also highlighted the trend of early marriage which has continued to decline throughout 2021 to 2023, namely 65 thousand cases of child marriage which decreased to 63 thousand. Then, in 2022, this figure decreased to 52 thousand, and 31 thousand in 2023. Head of Improving the Quality of Children and Women Woro Srihastuti said that in 2024, efforts would be made to target a reduction of up to 8.74 percent. Previously, in 2023, efforts to reduce early marriage had reached the target, namely 6.92%, this is in accordance with the 2024 Medium-Term Development Plan.³⁴

33. Raymond Wacks, *Philosophy of Law* (Oxford: Oxford Press, 2006).

34. Annisa Ramadhannia, "Tahun 2024 Pemerintah Berupaya Turunkan Pernikahan Anak 8,74%," 2024, <https://www.rri.co.id/nasional/902108/tahun-2024-pemerintah-berupaya-turunkan-pernikahan-anak-8-74/>.

Based on the explanation above, the provisions of Article 103 paragraph (4) letter e concerning the provision of contraceptives as part of reproductive health services for school children and adolescents are not effectively implemented to reduce the rate of marriage at a young age because the trend of child marriage has decreased from previous years. This policy can give the impression of being permissive towards free association and sex. The government, through the Ministry of Health, emphasizes that this regulation is intended to provide comprehensive education about reproductive health. The scope of this education includes knowledge about the reproductive system, its function, and process, how to maintain reproductive health, the risks of sexual behavior, and the ability to protect oneself from unwanted sexual relations. Article 103 paragraph (4) letter e concerning the provision of contraceptives is not needed. The policy to provide contraceptives for school children and adolescents that has just been issued by the government is rejected by the Indonesian Teachers Association or PGRI. Sex education is considered to still be something teachers can do in a more moral way in schools.³⁵

4. Conclusion

The Omnibus Law on Health plays a crucial role in ensuring the right to health as guaranteed by the constitution. Law No. 17 of 2023 introduces significant changes to the national healthcare system, including legal protection for healthcare workers, medical dispute resolution through restorative justice, and opportunities for foreign healthcare professionals to practice in Indonesia. Additionally, this regulation promotes the digitalization of healthcare services through TeleHealth and Telemedicine to enhance service accessibility, especially in remote and underserved areas (3T regions). The new focus on promotive and preventive healthcare aims to reduce reliance on curative services. However, one of the most controversial aspects of this law is the removal of mandatory healthcare spending, which was previously guaranteed in the state and regional budgets (APBN and APBD). This policy raises concerns about reduced healthcare funding, potentially hindering service equity, increasing out-of-pocket healthcare costs for the public, and obstructing the transformation of the national healthcare system. As a replacement, the government has introduced the Health Sector Master Plan (RIBK) with a “money follows program” approach. However, the implementation of RIBK requires strict oversight to ensure that essential healthcare services are not compromised. Healthcare policies must continue to guarantee equitable access and improved service quality as part of the vision for a Golden Indonesia 2045.

35. Stephanus Aranditio, “ PGRI Minta Aturan Penyediaan Alat Kontrasepsi Anak Usia Sekolah Dihapuskan,” no. Kompas.id (2024), <https://www.kompas.id/baca/humaniora/2024/08/13/pgri-minta-aturan-penyediaan-alat-kontrasepsi-anak-usia-sekolah-dihapuskan/>.

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