

## The Implementation of Indonesia's Health Law Regulation No. 17 of 2023: A Legal-Political Analysis of Centralization and Authoritarian Tendencies



Stella Hita Arawinda<sup>1</sup>, Fifiana Wisnaeni<sup>2</sup>

<sup>1,2</sup>Master of Law, Faculty of Law, Diponegoro University

**ABSTRACT:** The centralization of authority in the central government is perceived as weakening regional autonomy and local policy diversity. The legislative process of this law has also been criticized for lacking substantial involvement from civil society and professional organizations. Meanwhile, the digitalization of health data, although improving efficiency, poses risks of state data misuse. This policy raises concerns regarding government accountability, particularly due to the weak mechanisms for public oversight and evaluation. This study examines the implementation of Law Number 17 of 2023 on Health through a legal-political analysis, particularly its tendency towards an authoritarian political configuration. Drafted in response to health challenges during the COVID-19 pandemic, this law aims to reform the national health system with a more centralized approach. However, characteristics such as power centralization, minimal public participation, strict monitoring through health data digitalization, and repressive policies toward medical professionals indicate a reduction in democratic principles in the health sector's governance. Through a progressive legal perspective, this paper emphasizes the importance of applying the principles of justice, utility, and legal certainty in health policies. The Health Law should promote inclusivity, transparency, and active participation from the public and medical professionals. The author recommends decentralizing health policies, strengthening data protection, revising regulations to reduce authoritarian characteristics, and prioritizing deliberative democracy in health reforms.

**KEYWORDS:** Health Law 2023, Authoritarian Politics, Power Centralization, Progressive Law, Public Participation

### I. INTRODUCTION

Indonesia's healthcare system faces significant challenges, especially during the COVID-19 pandemic, which exposed various structural weaknesses that require immediate attention. The pandemic not only tested healthcare service capacity but also revealed inequalities in access to medical facilities, the distribution of healthcare workers, and administrative efficiency. This crisis highlights the urgent need for comprehensive reforms to create a resilient, inclusive, and adaptive healthcare system. In this context, Law Number 17 of 2023 on Health was introduced as an effort to address these challenges through progressive policies that are community-oriented. The COVID-19 pandemic accelerated the urgency of health system reform. During this crisis, the limitations of healthcare facilities became evident. Many hospitals in Indonesia, particularly in remote areas, lacked adequate capacity to handle patient surges. A 2023 report by the Indonesian Ministry of Health indicated that over 60% of healthcare facilities in remote regions faced shortages of essential medical equipment during the pandemic. Additionally, the crisis exacerbated disparities in healthcare workforce distribution. According to WHO (2022), most medical personnel were concentrated in urban areas, leaving rural regions without sufficient access to healthcare services.

Furthermore, high healthcare costs remain a major barrier for low-income communities. Although the National Health Insurance System (JKN) provides coverage for some, it has not comprehensively met public health needs. The high out-of-pocket (OOP) expenses, particularly during the pandemic, posed significant financial risks for many Indonesian families. WHO (2022) reported that more than 30% of Indonesian households experienced financial distress due to healthcare expenditures. Complex bureaucratic procedures also posed significant barriers to healthcare service distribution during the pandemic. Inefficient resource management, such as delays in distributing personal protective equipment (PPE) and vaccines, underscored the need for a more flexible and responsive approach to national healthcare system management.

To address these challenges, the 2023 Health Law was designed with a progressive legal approach that emphasizes flexibility, dynamism, and social justice. This approach ensures that the law is not merely an administrative or political tool but also reflects the actual needs of society. For instance, this law focuses on protecting vulnerable groups, such as children, the elderly, and communities in remote areas, who are often marginalized in health policies (Mahfud MD, 2020).

# The Implementation of Indonesia's Health Law Regulation No. 17 of 2023: A Legal-Political Analysis of Centralization and Authoritarian Tendencies

The progressive approach is also evident in efforts to strengthen primary healthcare services. Primary healthcare serves as the backbone of an inclusive health system. Through the 2023 Health Law, the government aims to expand access to primary care by increasing the number of community health centers (puskesmas), improving infrastructure, and providing training for frontline healthcare workers. Additionally, the digitalization of healthcare services is a key priority under this law. By leveraging information technology, the government seeks to reduce bureaucratic obstacles that have long hindered service accessibility. For example, implementing electronic medical records is expected to enhance service efficiency and make it easier for the public to access their health information.

Despite its ambitious vision, the implementation of the 2023 Health Law faces several challenges. One major concern is the potential emergence of more centralized regulations, which may reduce public participation in policy oversight and evaluation. In Indonesia's legal history, many ambitious policies have failed due to weak oversight mechanisms.

## II. FORMULATION OF THE PROBLEMS

How is the implementation of Indonesian Health Regulation Number 17 of 2023 to its tendency toward an authoritarian political configuration?

## III. RESEARCH METHOD

The approach used in this study is a qualitative approach with a normative legal research method using a statutory approach to compare the Health Law No. 17 of 2023 with previous health regulations and analyze the implications of these legal changes, which exhibit strong characteristics of political centralization and authoritarian tendencies. On the other hand, this study also employs a conceptual approach to define and examine key legal principles and theories relevant to healthcare governance, such as the concepts of justice, utility, and legal certainty, as well as the perspectives of legal and public health experts regarding regulatory frameworks. Furthermore, an analytical approach is applied to evaluate findings derived from primary legal materials (statutory regulations), secondary legal materials (journals, books, and other scientific literature), and tertiary legal materials (legal dictionaries) (Marzuki 2011).

## IV. DISCUSSION

The enactment of Law Number 17 of 2023 on Health serves as a legal framework regulating various aspects of healthcare in Indonesia. As expressed by the Minister of Health, Budi Gunadi Sadikin, the primary objective of this law is to transform Indonesia's healthcare system, driven by the urgency of the global pandemic.<sup>1</sup> Consequently, the Health Law 2023 is perceived as an urgent step forward, designed to address various challenges such as the shortage of medical specialists, lack of transparency in professional licensing, high drug prices, and inefficiencies in healthcare financing. The government believes that this legislation will not only increase the number and distribution of healthcare professionals but also simplify the licensing process. Moreover, it is expected to provide more effective legal protection, particularly in responding to criminal offenses and discriminatory practices within the healthcare sector.

In legal philosophy, Gustav Radbruch, as cited by Satjipto Rahardjo, states that three fundamental legal principles must always be upheld: justice, utility, and legal certainty.<sup>2</sup> Thus, a critical examination is necessary to assess the implementation orientation of the Health Law 2023 in relation to these three fundamental values. Modern constitutional theory distinguishes between two primary approaches to law enforcement: the top-down and bottom-up models. According to Richard A. Posner, a top-down approach means that laws are formulated by the government first and then communicated to the public. Karl Von Savigny's theory, rooted in the historical school of legal thought, asserts that laws should develop organically as a reflection of the customs, traditions, and societal needs of a particular community.

Unlike rigid, top-down legal frameworks, Savigny believed that legislation should not be artificially imposed but should instead evolve naturally from the people's shared values and historical experiences. This perspective emphasizes that legal systems are deeply interconnected with the culture and history of a society, making them more effective and legitimate when they emerge from within rather than being externally dictated. Consequently, Savigny's approach stands in contrast to legal positivism, which views law as a set of rules imposed by authority, highlighting instead the importance of societal consciousness in shaping legal norms.

If analyzed through Radbruch's legal perspective, Posner's top-down model aligns with the principle of legal utility.<sup>3</sup> Karl Von Savigny further asserts that law is a reflection of the social conscience, meaning that laws formulated without direct engagement with society will struggle to achieve practical utility.<sup>4</sup> From the preliminary discussion, it can be inferred that the Health Law 2023

<sup>1</sup> <https://setkab.go.id/transformasi-kesehatan-menkes-pemerintah-fokuskan-layanan-berbasis-pencegahan/> accessed in September 2024

<sup>2</sup> Rahardjo, S. 1980. *Hukum dan Masyarakat*. Semarang: Angkasa Bandung hlm. 15-16

<sup>3</sup> <https://www.lawnotes4u.in/savignys-theory-of-volkgeist-historical-school/> diakses pada September 2024

<sup>4</sup> Posner, R.A. *Overcoming Law*, Cet. 5 (Harvard University Press 1998).

## The Implementation of Indonesia's Health Law Regulation No. 17 of 2023: A Legal-Political Analysis of Centralization and Authoritarian Tendencies

was established with a predominantly top-down approach. The effectiveness of a legal regulation can be assessed by its impact on the public, who serve as the primary stakeholders of any law's implementation.

In a democratic nation, healthcare is a fundamental right that must be guaranteed by the state through inclusive, participatory, and needs-based policies. However, an analysis of the Health Law 2023 in Indonesia suggests strong indications that the political configuration behind its enactment and implementation exhibits characteristics approaching authoritarianism. This tendency can be observed in several critical aspects.

One of the most significant issues is the increasing centralization of power within the national government. The Health Law 2023 grants expanded authority to the central government, particularly the Ministry of Health, in managing the national healthcare system. The previous role of regional governments, which had the autonomy to formulate healthcare policies based on local needs, has been significantly diminished. Under this configuration, the government assumes the role of the sole actor in determining healthcare policies, leaving little flexibility for local governments. Such centralization creates a monopoly of power that disregards regional diversity and reduces local governments and communities to passive subjects who must comply with decisions from the central authority.

Another major concern is the limited public participation in the legislative process. The passage of the Health Law 2023 has been criticized as rushed and lacking transparency. Consultations with civil society organizations, professional healthcare associations, and medical professionals were mostly formalities rather than meaningful efforts to absorb public input. When participatory spaces are restricted, policies tend to reflect the interests of the ruling authorities rather than the needs of society. In this regard, the law does not merely represent a centralized governance model but also erodes democratic participation, which is essential for an inclusive healthcare system.

A particularly controversial component of the Health Law 2023 is the national-scale digitalization of healthcare data. While this initiative has the potential to improve healthcare efficiency, weak privacy protection mechanisms raise concerns about the potential misuse of data by the state. When the government has extensive access to individual health data without adequate oversight, the system risks becoming a tool for increased surveillance, placing individuals in a vulnerable position against possible abuses of power.

The issue of weakened accountability also arises with the implementation of this law. The increased dominance of the executive branch in healthcare policy risks fostering unilateral decision-making that is difficult for the public or the legislature to oversee. When evaluation and monitoring mechanisms are not designed to be transparent and participatory, power becomes concentrated without effective checks, increasing the likelihood of abuses of authority. The legal approach discussed in this article aligns with Phillip Selznick's theory of Responsive Law, which emphasizes that law should be more than a mere instrument of formal control; it must also serve as a dynamic mechanism that adapts to societal needs and values.

As outlined in this article, effective regulation is not solely concerned with normative compliance but also considers the social context and the impact of policies on various stakeholders. Selznick argues that responsive law must balance legal authority with sensitivity to social change, thereby enhancing its legitimacy and effectiveness in delivering substantive justice. In the context of this article, a more flexible and participatory legal approach reflects the principles of responsive law, where regulations are not solely designed through a top-down process but also incorporate public engagement in their formulation.

The law further imposes more stringent penalties on medical professionals for administrative violations, reflecting a repressive approach that may be disproportionate. If medical professionals face severe criminal sanctions for administrative infractions, the policy could create an atmosphere of fear that stifles medical autonomy and discourages innovation. Moreover, if citizens are compelled to comply with healthcare policies, such as mandatory vaccinations or health data collection, without sufficient space for objection, this policy shift represents an increasing state effort to exert control over individual health choices.

The Health Law 2023 has also attracted criticism regarding its potential to weaken the role of professional organizations, such as the Indonesian Medical Association (IDI). Previously, these organizations played a significant role in certifying and regulating healthcare professionals. However, under the new law, their authority in the licensing and accreditation process has been significantly reduced. This shift is seen as opening the door for increased political interference in the regulation of medical professionals.

The financial implications of this law also warrant scrutiny. One of the most contentious changes is the removal of the requirement for a minimum healthcare budget allocation in both the national and regional budgets. This policy shift raises concerns that healthcare funding may be deprioritized, affecting public access to essential medical services, particularly in underprivileged communities. The lack of guaranteed budget allocations could lead to reduced healthcare spending, ultimately impacting the quality and accessibility of medical services for the general public.<sup>56</sup>

---

<sup>5</sup> Rahardjo, S. 1982. Ilmu Hukum. PT Citra Aditya Bakti: Bandung

<sup>6</sup> Mahfud MD. (2011). "Politik Hukum di Indonesia". Jakarta: Rajawali Pers

The Implementation of Indonesia's Health Law Regulation No. 17 of 2023: A Legal-Political Analysis of Centralization and Authoritarian Tendencies

Given that this law was only enacted at the end of 2023 and took effect immediately, a comprehensive evaluation of its long-term impact is not yet available. However, early indications suggest that healthcare professionals are already experiencing significant changes. In Purworejo Regency, for example, interviews with Dr. Unggul Prabowo, Sp. OG, Deputy Director of Kasih Ibu General Hospital, indicate that the Health Law 2023 has led to fundamental shifts, particularly in the centralization of licensing under the Ministry of Health.

Previously, medical professionals required a recommendation from professional organizations to obtain a medical practice license. Under the new regulation, licensing is issued directly by the Ministry of Health, eliminating the role of professional associations. While this change reduces bureaucracy, it also diminishes the role of independent medical oversight.

Another significant impact is the increased cost of obtaining professional development credits. Previously, healthcare professionals could apply for professional credit units (SKP) through local health departments at a relatively low cost. Under the new system, all applications must be processed through the Ministry of Health’s official platform at a significantly higher fee. This increase in cost raises concerns that financial barriers could limit access to continued education and training for healthcare professionals.

Overall, the Health Law 2023 represents a shift towards a highly centralized healthcare governance model, emphasizing efficiency at the potential cost of democratic governance, professional autonomy, and public rights. While the intention behind this law is to improve national healthcare standards, its implementation must be carefully monitored to ensure that it does not lead to unintended consequences, such as diminished public participation, weakened institutional checks and balances, and increased financial burdens on healthcare workers and patients.

Moving forward, it is crucial for policymakers to implement safeguards that balance efficiency with inclusivity. Restoring budgetary commitments for healthcare, ensuring data privacy protections, strengthening independent medical governance, and creating spaces for meaningful public participation are essential steps to prevent the erosion of democratic values within the healthcare system.

A well-functioning healthcare system must not only be efficient but also uphold principles of justice, public accountability, and human rights. Without these safeguards, the Health Law 2023 risks fostering a more rigid and state-controlled health system that may ultimately undermine the public’s trust in healthcare governance and limit equitable access to medical services.

Aspect	Comparison of Health Law Regulations: Old vs. New	
	Old Health Law	New Health Law
Legal Basis	Law No. 36 of 2009 on Health	Law No. 17 of 2023 on Health
Regulatory Approach	Sectoral approach with rigid regulations	<b>Omnibus Law</b> approach, simplifying various regulations into a single framework
Healthcare System	Focuses on government roles in healthcare provision	Grants a greater role to <b>private and healthcare industry sectors</b>
Healthcare Professionals	Profession-based regulations with sectoral approaches	More flexible regulations with <b>simplified licensing processes</b> for medical professionals
Health Insurance	Emphasizes BPJS Kesehatan’s role with a universal approach	<b>Strengthens healthcare financing schemes</b> , including private insurance involvement
Pharmaceutical Industry	Strict regulations on drug production and distribution	Encourages <b>investment and domestic pharmaceutical production</b> with more flexible regulations
Technology & Digitalization	Limited accommodation for digital innovations in healthcare services	Accommodates <b>telemedicine and digital health services</b>
Public Health	Focuses on promotive and preventive approaches through government programs	Emphasizes <b>multi-sector collaboration</b> , including community and private sector involvement
Sanctions & Supervision	Administrative and criminal sanctions for violations	Emphasizes <b>risk-based supervision</b> with incentives for compliance

This comparison highlights that the new Health Law is more focused on **regulatory efficiency, expanding private sector roles, and digitalizing healthcare services**, whereas the previous regulation was more rigid and centered on the public sector.

V. CONCLUSIONS

Law Number 17 of 2023 on Health introduces an ambitious vision to strengthen Indonesia’s national healthcare system through a centralized and efficiency-oriented approach. However, its implementation reflects centralistic tendencies that position the state as the dominant entity in healthcare governance. With extensive control and a tendency to minimize public participation, this law exhibits characteristics of an authoritarian political configuration. In this framework, the state acts as the primary controller, while democratic principles such as public participation, transparency, and accountability are sidelined.

## The Implementation of Indonesia's Health Law Regulation No. 17 of 2023: A Legal-Political Analysis of Centralization and Authoritarian Tendencies

Although this approach may aim to accelerate decision-making and policy implementation, it carries serious risks for the national healthcare system. The absence of public participation can undermine policy legitimacy, weaken public trust, and create opportunities for power abuse. Without strong oversight mechanisms and active involvement from various stakeholders—including civil society and healthcare professionals—this centralized approach may ultimately harm the very people it aims to serve.

Furthermore, such a model removes opportunities to build a more inclusive and responsive healthcare system. Excessive centralization risks ignoring the unique healthcare challenges faced by different regions, ultimately exacerbating disparities in access and service quality. If left uncorrected, this condition not only erodes democratic dimensions in healthcare governance but also paves the way for unchecked power accumulation. In the long term, this could lead to healthcare policies that are not only ineffective but also potentially detrimental to public rights.

Therefore, the success of this law depends on the government's ability to balance efficiency with democracy. Reforms that uphold public participation, transparency, and accountability are crucial. Through the involvement of all stakeholders, a fair, inclusive, and resilient healthcare system can be established without compromising fundamental democratic principles. Without corrective measures, the system may continue to drift towards authoritarianism, widening the gap between the state and its citizens.

### VI. RECOMMENDATIONS

To counteract the potential authoritarian political configuration in Law Number 17 of 2023 on Health, progressive measures emphasizing democracy, transparency, and accountability must be implemented.

#### 1. Decentralization of Health Policy

The government must adopt a more inclusive approach by granting greater autonomy to regional governments to formulate health policies that align with local needs and conditions. Decentralization is essential to ensure that health policies are not only relevant at the national level but also effectively address specific regional challenges.

#### 2. Substantial Public Participation

The legislative process must genuinely involve public participation. Civil society organizations, professional associations, and healthcare workers should be meaningfully engaged, not merely included as formalities. Inclusive participation can enhance policy legitimacy and strengthen public trust in the government. Transparent consultation forums can serve as platforms for the public to express their concerns, criticisms, and solutions, ensuring that policies truly reflect societal needs.

#### 3. Strengthening Health Data Protection

Individual health data protection must be a top priority. In the digital era, the potential for state or third-party misuse of health data is increasing. Therefore, stricter regulations and oversight mechanisms are necessary to safeguard healthcare data management. The government should establish an independent supervisory body responsible for ensuring data security and preventing misuse. Transparency in data management should also be reinforced with strict sanctions against violations to maintain public trust.

#### 4. Fairer Regulation of Healthcare Professionals

In terms of medical professionalism, regulatory sanctions should focus on competency development and professional ethics rather than repressive punitive measures. Educational and empowerment-based approaches are more effective in encouraging medical professionals to provide high-quality services without fear of excessive penalties that could hinder their performance.

#### 5. Non-Coercive Public Health Policies

Broad-impact health policies, such as mandatory vaccinations, should be implemented through persuasive means. The government must create open dialogue spaces, address public concerns, and provide informed choices so that policies are accepted voluntarily rather than enforced through coercion.

#### 6. Revisions to the Health Law

Amendments to the Health Law are necessary to eliminate elements that could reinforce authoritarianism. Regulations should be designed to be more democratic and socially just. This way, the law can function as an instrument to protect public rights, uphold healthcare professionalism, and establish a fair, inclusive, and resilient healthcare system capable of addressing future challenges.

### REFERENCES

- 1) Atip Latipulhayat. (2014). Hans Kelsen. *Jurnal Ilmu Hukum*, Vol. 1, No. 1. Bandung: Universitas Padjadjaran.
- 2) Friedman, L. M. (2002). *Law and Society: An Introduction*. Englewood Cliffs, NJ: Prentice Hall.
- 3) *Jurnal Kajian Ilmu Hukum dan Syariah*. (2016). Volume 1, Number 1.
- 4) Kementerian Kesehatan Republik Indonesia. (2023). *Laporan Tahunan Kesehatan Indonesia 2023*. Jakarta: Kemenkes RI.
- 5) Mahfud MD. (2011). *Politik Hukum di Indonesia*. Jakarta: Rajawali Pers.



## The Implementation of Indonesia's Health Law Regulation No. 17 of 2023: A Legal-Political Analysis of Centralization and Authoritarian Tendencies

- 6) Mahfud MD. (2020). *Hukum Progresif: Gagasan dan Implementasi*. Jakarta: Pustaka Hukum.
- 7) Murdan. *Hukum Islam dalam Kerangka Sistem Hukum Masyarakat Modern*.
- 8) Posner, R. A. (1998). *Overcoming Law* (5th ed.). Harvard University Press.
- 9) Rahardjo, S. (1980). *Hukum dan Masyarakat*. Semarang: Angkasa Bandung.
- 10) Rahardjo, S. (1982). *Ilmu Hukum*. Bandung: PT Citra Aditya Bakti.
- 11) Rahardjo, S. (2006). *Hukum Progresif: Sebuah Sintesa Hukum Indonesia*. Yogyakarta: Genta Press.
- 12) Saiful Anam & Partners. *Kedudukan Surat Edaran Menteri dalam Sistem Hukum Indonesia* (saplaw.top).
- 13) Tamanaha, B. Z. (2010). *Law and Society: A Companion to Philosophy of Law and Legal Theory*. Wiley Blackwell Publishing.
- 14) Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan.
- 15) United Nations Development Programme (UNDP). (2021). *COVID-19 and Social Justice: Lessons Learned*. New York: UNDP.
- 16) Wacks, R. *Understanding Jurisprudence: An Introduction to Legal Theory*.
- 17) World Health Organization (WHO). (2022). *Strengthening Health Systems in the Context of the COVID-19 Pandemic*. Geneva: WHO.



There is an Open Access article, distributed under the term of the Creative Commons Attribution – Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.