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Health Omnibus Law: Perspective of Legal Sociology

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Abstract. Law Number 17 of 2023 concerning Health has adopted the use of the omnibus law method. It is necessary to study in depth how the formation process must be in accordance with the law on the formation of laws and regulations. Because it combines almost 9 existing laws, from a sociological perspective, law has a very large influence in the formation process. Strategic issues in the formation of the health law are related to authority, institutions, organizations, professional education issues, competency tests, interventions to the administrative field. For this reason, in the implementation and evaluation stages, the sustainability of the law needs to be carried out so that the purpose of the birth of the omnibuslaw method of forming health laws can be achieved for the benefit of all parties. Law Number 17 of 2023 concerning Health has adopted the use of the omnibus law method. It is necessary to study in depth how the formation process must be in accordance with the law on the formation of laws and regulations. Because it combines almost 9 existing laws, from a sociological perspective, law has a very large influence in the formation process. Strategic issues in the formation of the health law are related to authority, institutions, organizations, professional education issues, competency tests, interventions to the administrative field. For this reason, in the implementation and evaluation stages, the sustainability of the law needs to be carried out so that the purpose of the birth of the omnibuslaw method of forming health laws can be achieved for the benefit of all parties.

Keywords. Omnibus Law; legal sociologi; human resources health; Indonesia

Introduction

Law in Indonesia is enlivened by the pros and cons of Law Number 11 of 2020 concerning Job Creation (hereinafter referred as UU Cipta Kerja) UU Cipta Kerja gathered the attention of many legal experts not only due to the controversy regarding the regulated substance, but also due to the method used during the drafting of this law. UU Cipta Kerja used a method that's relatively in Indonesia, which is the "omnibus law".[1] This idea was implemented during the Presidential Era of Joko Widodo, where it's been conveyed firmly in the national speech at his Presidential Inaguration in front of the People's Consultative Assembly (hereinafter referred as MPR) on October 20th, 2019. Omnibus law became the focus of the president, with the goal of solving the issue of overlapping regulation and birocracy. Omnibus law was used with the hope of giving good service for the people and to invite foreign investors to put their investment in Indonesia with the drafting of 2 (two) draft bills (hereinafter

referred as RUU), which is RUU Cipta Kerja (Job Creation) and RUU Pemberdayaan UMKM (Empowerment of UMKM).[2]

From a historical perspective, omnibus law is basically not a new thing. The concept of omnibus was born and grew in countries that used anglo-saxon legal system, or what's usually called common law system, for example countries like United States of America; Canada; Singapore; United Kingdom; and others.[3] Along with the times, omnibus law is starting to be used in many countries to resolve issues and to organize the regulations, both for substantive laws and for budget allocation.[4] As for the terming, the process is called omnibus legislating, and the product is called omnibus bill. The word omnibus itself comes from Latin, which means everything or all things.[5]

In Indonesia, basically there are some laws that used mechanism that is similar in concept and technique with omnibus law. First of them, is MPR Decree Number I/MPR/2003 concerning the Review of the Material and Legal Status of MPR Decree year 1960 to year 2002. Next is Law Number 9 Year 2017 concerning the enactment of Governmental Regulation In Lieu Of Law (hereinafter referred as Perpu) Number 1 Year 2017 concerning Access to Financial Information for Taxation to become Law. This Perpu revoke and declare invalid the norms in some regulations.[6] After that is Law Number 7 Year 2017 concerning General Election that united and revised 6 (six) laws.

The omnibus law is basically present to shorten legislation process by merging some regulations into one special law.[7] It is due to the aforementioned reason that, according to Glen S. Krutz, omnibus law can have a significant influence in legislative productivity.[8] Talking about omnibus law, it's usually associated to its merit in productivity, efficiency, or quantity of regulation, and regarding regulation, it's not enough to just talk about those goals, there is another thing that is important to focus on, which is the quality of the regulation that's formed based on omnibus law.

Using the omnibus law method is essentially aimed at solving the issues of regulations like hyper regulations and overlapping regulations. However, the implementation of UU Cipta Kerja is instead inversely proportional, because this law resulted in the creation of many implementing/technical rules.[9] This surely has the potential to become a counterproductive effort. On the other hand, UU Cipta Kerja is also controversial because it's not based on good legislative principles, especially about the people's participation and transparency of information.[10] This bad impression that's created during the legislative process of UU Cipta Kerja might be what caused omnibus law to become something to be wary of in Indonesia. Regardless of the controversy about UU Cipta Kerja, the purpose and essence of omnibus law is basically a good mechanism, if it fulfill the principles of creating rules and regulations in Indonesia.

The omnibus law on health law initially raised pros and cons because it combined more than 9 existing laws, thus raising pros and cons at the time of its formation and was included in the 2023 Priority National Legislation Program which is still in the drafting stage in the DPR. [10] For this reason, this study will examine in depth the application of the omnibus law in the health sector from a sociological perspective.

Research Method

The type of research used in this study is normative legal research.

Result and Discussion

Measuring The Urgency of Omnibus Law In The Health Sector

This paper aims to examine the implementation of the omnibus law in Law No. 17 of 2023 concerning Health by measuring its urgency. Measuring in this case means measuring and considering the time of the process of drafting the omnibus law in the health sector. For this reason, this paper will be used as material to assess the implementation and evaluation of the health law so that it can provide input from a technical or substantive perspective that will be improved in the future. This paper aims to examine the implementation of the omnibus law in Law No. 17 of 2023 concerning Health by measuring its urgency. Measuring in this case means measuring and considering the time of the process of drafting the omnibus law in the health sector. For this reason, this paper will be used as material to assess the implementation and evaluation of the health law so that it can provide input from a technical or substantive perspective that will be improved in the future..

Given that omnibus law is being used to merge/harmonize several laws and regulations into one special regulation, then the first thing that's need to be understood is the condition and amount of regulations in the health sector.

Legal Perspective.

In the hierarchy of Laws, there are several regulations in the health sector, such as:

1. Law number 4 Year 1984 concerning Outbreak of Infectious Disease
2. Law number 29 Year 2004 concerning Medical Practice
3. Law number 44 Year 2009 concerning Hospital (hereinafter referred as UU Rumah Sakit)
4. Law number 36 Year 2009 concerning Health (hereinafter referred as UU Kesehatan)
5. Law number 18 Year 2014 concerning Mental Health
6. Law number 36 Year 2014 concerning Health Workers (hereinafter referred as UU Tenaga Kesehatan)
7. Law number 38 Year 2014 concerning Nursing
8. Law number 6 Year 2018 concerning Health Quarantine
9. Law number 4 Year 2019 concerning Obstetrics

Aside from abovementioned laws related to health sector, because omnibus law also intersect with other laws, like UU Cipta Kerja that had ammended several provisions in UU Rumah Sakit and UU Kesehatan. In addition, a harmonization effort hasn't been done for the implementing regulations of the related laws (*verordnung*).

Briefly, it is apparent that regulation in the health sector consisted of several aspects, starting from medical facilities, health professions, even special education. Because of that, a question arise about whether RUU Kesehatan would also merge the aforementioned regulations, or would it be just a regulation in health sector? It is hard to answer, because one have to first see the draft of this bill, which hasn't been officially publicized.[11]

Due to aforementioned facts, if one refer to Article 15 of DPR Regulation Number 2 Year 2015 concerning The Procedures For Compiling A National Legislative Program, the National Legislative Body needs to announce the plan to draft the Priority National Legislative Program to the people through either printed or electronic media to gather the people's input. With how short the timespan between announcing the plan to the enactment of the drafting, it has been found that there gathered input would be minimal. This condition has the potential to

repeat the problem of the lack of participation from the people during the drafting of UU Cipta Kerja.

Regardless of what has been discussed above, overregulation in the health sector surely will cause many problems, especially the issue of disharmony and conflicting regulations. To prove this point, there are several examples of legal problems listed below:

Table 1. Legal Issue in Health Regulation

No	Article	Variable	Finding	Analysis	Recommendation
1	Article 177 paragraph 2 letter e and f UU Kesehatan disharmony with Article 39 angka 3 UU Nomor 24 Year 2011 concerning BPJS (hereinafter referred as UU BPJS)	Authority	In the same hierarchy of law, both are regulating the same issue, but give different authority	<p>Article 177 number 2 letter e dan f UU Kesehatan stated that:</p> <p>(1) National Health Advisory Body (hereinafter referred as BPKN) and Regional Health Advisory Body (hereinafter referred as BPKD)</p> <p>(2) BPKN and BPKD as mentioned in paragraph (1) have the following duties and authorities:</p> <p>e. To give advocacy about fund allocation and usage from all sources for effective, efficient utilization, and according to the set strategy;</p> <p>f. Observe and evaluate the implementation of the health development.</p> <p>Meanwhile, in Article 39 number 3 of UU BPJS stated that external supervision of BPJS is done by:</p> <p>a. National Social Security Council (hereinafter referred as DJSN); and</p> <p>b. Independent supervision institution.</p> <p>In the explanation, what's meant by "supervision" here is that DJSN conduct monitoring and evaluation of the implementation of the Social Security Program, and what's meant by "independent supervision institution" is the Financial Services Authority for certain things according to its authority in conduction inspection. BPJS, in order to implement national social security is a part of health development, in other words, the function of DJSN is almost the same with BPKN</p>	Harmonization
2	Article 12 UU Rumah Sakit	Authority	Article 1 UU Tenaga Kesehatan	Based on the definition in Article 1 of UU Tenaga Kesehatan, health worker has the authority to provide health services according to their areas of expertise, but in doing that,	Ammend

				all health workers in question must have STR (article 1 paragraph 10) from their respective health councils, and SIP (article 1 paragraph 11) from the government, so that the people as the users of services can with guarantee enjoy the services provided safely, and both the people and the health workers are legally protected	
3	Effectivity of Article 19, article 20 and article 21 UU Rumah Sakit	Institutional	Organizational Structure	This article becomes a reference point and driving factor for a hospital to give assurance for the quality, safety, and professionalism by paying attention to the kind of services given and clarity of management	Even though this Law has been enacted since 2009, but in fact, not many people in the hospital side knows about this. One solution is to socialize about UU Rumah Sakit to the people through various means, so that the people can be effectively informed, and this can be done either by medical practitioners of private or public hospitals, health ministry, organizations of hospitals, organizations of professionals, and so on.
4	Article 167 paragraph (2) UU Kesehatan	Organizational	Unclear division of duty and authority	Tiered health management in central and regional area.	The only clause that regulate the relation between central and regional area regarding the implementation of BPJS is in Article 51 of UU BPJS, but the formed relationship isn't decentralizd as mandated in Article 12 of UU Pemda, even though the matter of health is packaged inside the social security system is a mandatory matter- a basic service that must be split with the regional area. This article needs to be ammended and conformed.

From the example of problems listed above, it can be seen that the issues of regulation in the health sector is very complex, starting from the issue of authority, organization, and many others. These examples still haven't included many other related issues, such as professional education, competency test, internship, even the issue of health administration. On the other hand, it has to be acknowledged that the large amount of regulation in the health sector will give birth to many legal problems or anomalies.

Social Perspective.

Omnibus law in the health sector, from the perspective of current social humanities, aside from solving the issue of regulation, basically can also solve the issue of health nationally

First, the issue of access to primary services: This issue includes the lack of community empowerment, lack of access to primary medical service facilities and its infrastructures, management governance, and unoptimal human resources, even to unoptimal and unfocused program implementation.

Second, the issue of the capacity of hospital referral: This issue includes the limited access of medical referral services, clinical governance, and management of referred health service facilities, completeness of infrastructure, the availability of pharmacies, medical implements, and human resources in the health sector, unoptimal network and information system for medical referral service. There is a need to review UU Tenaga Kesehatan about the policy of stationing health workers to fulfillment of available health workers in the referred health service facilities.

Third, the issue of national health resilience: this issue includes the problem of the high cost of importing raw medical material; vaccine; and medical implements, unoptimal production/fulfillment of pharmaceutical stock and medical implements, management and services of pharmacies that is still below standard, unoptimal supervision of the quality of medical implements and PKRT (home health supplies), unintegrated record keeping and information system.

Fourth, the effectivity issue of health funding: this issue includes unsustainable funding of JKN (national health security) with a risk of deficit, unoptimal preventive promotional health funding, unoptimal role of private/non-public sector funding.

Fifth, the issue of lacking and unequal distribution of human resources in the health sector, also the lack of competence based training.

Sixth, the issue of medical technology including fragmented data, unintegrated development of health application software, there are also issues of limited regulations regarding data protection; standard of data & interoperability; patients' rights and privacy.

Challenges of Omnibus Law RUU

Omnibus law in the health sector surely would face many challenges. Basically, the issues with regulation and complex medical practice are not just because of the technical difficulties on how to create the draft bill, there are also other challenges that must be faced, such as:

1. Some Laws in the health sector that would be revoked or amended by this omnibus law each has their own legal, philosophical, and sociological ground.
2. The principle of constitutional supremacy has put limits on the authority to arrange laws and regulation. This means that the current laws in the health sector have different stakeholders that need to be addressed.
3. Uncertainty of law due to sectoral ego between state organizers.

4. The need for a parameter to decide when the content materials must use the omnibus mechanism and when to use regular law mechanism needs a clear ground in the health issue.

5. The people's participation in all stages of creating this draft bill must be assured. The previous fault in creating UU Cipta Kerja must not be repeated (after it's been enacted, it has to be changed via a Perpu)

6. Health professional is unique and has its own characteristics and cannot be generalized.

7. There are other issues raised due to some provisions in UU Rumah Sakit and UU Kesehatan that has been changed in UU Cipta Kerja

Aside from the aforementioned challenges, creating law also has to fulfill other requirements first. So, this omnibus law draft bill must fulfill these main requirements: (i) clarity of goal; (ii) the right institution or forming organ; (iii) matching type and content material; (iv) actionable; (v) utility and usefulness; (vi) clear formulation; and (vi) transparency.

Changes of Regulation in Health Sector after UU Cipta Kerja (Law No.11 Year2020 , PERPU No.2 Year 2022)

As mentioned before, one of the challenge in drafting this draft bill is due to UU Cipta Kerja that has ammended some provisions in other Laws in health sector, among them is UU Rumah Sakit and UU Kesehatan. Regarding this, there comes a question, would UU Cipta Kerja be included among the laws that would be ammended through this draft bill?

There are some provisions in the health sector that has been ammended by UU Cipta Kerja,

First, regarding the nomenclature of health workers and medical workers. The term medical worker includes doctors, dentists, and specialist, according to Supreme Court Ruling Number 82/PUU-XIII/2015 which essentially separate between medical worker and health worker. UU Cipta Kerja has applied the ruling in Article 4A paragraph (3) letter a. But pharmacy worker, administrative and policy worker in the medical sector, biostatistic and population workers, and other health workers aren't included in the list of health workers, this would give birth to debate, and threaten the sense of justice of other health workers. Other than that, UU Cipta Kerja also explain that veterinarian is also included in medical service, even though it isn't aimed at animal health.

Second, addition of professions. Article 112 Number 2 Article 4A paragraph (3) letter a concerning medical health service. Medical health services can be given by "dukun bayi" (traditional midwives) and alternative treatment, including paranormal. In this case midwife and dukun bayi has the same position, even though the later hasn't got legitimate regulation about ethics; traditional midwifery professional standard, society's right to use medical services, standard of services or standard operational procedures.

The usage of supranatural services as part of alternative medical treatment has yet to become widespread among medical society. In terms of regulation in health sector, traditional health services are allowed. It means that the application depends on experience and expertise acquired, and can be considered and applied according to applicable law and social rules. Part of traditional health services also use expertises and another part use drinks. Traditional therapist also need formal training to be approved as health professional. So far, Indonesia has not give formal training for services that use paranormal phenomenon such as dukun bayi in the health sector.

Third, change in UU Kesehatan and UU Rumah Sakit. In UU Kesehatan, Article 30 that originally has five paragraphs is reduced into four, so is Article 111 about food and drinks for public consumption is reduced from six into four. Another, Article 188 refer to health worker and the amount of punishment for administrative fault that is done by health agency is reduced from four into just one paragraph.

Next, in UU Rumah Sakit, the first line of Article 24 was ammended and now refer about categorization of hospitals depending on the ability of services, supporting facilities, and human resources. In Article 62 about administrative penalty for unapproved hospital authorization is raised from 5 million Rupiah into 7 million Rupiah.

Fourth, in the taxation of health sector, UU Cipta Kerja stated that there is no value added tax for medical service. Because of that, neither public nor private institution has right to charge value added tax, but they must charge income tax (PPh) when giving medical service to upper class medical facilities and referred medical facilities. The provision in UU Cipta Kerja comprehensively acknowledge the existence of spirit and record spirit as alternative medical service. This can be found in part 4A (3) regarding medical services. Aside from supranatural or paranormal as alternative medical services, there are also seven other services listed as medical services.

Fifth, about hospital accreditation. Article 40 paragraph (1) UU Cipta Kerja mandate that hospitals have to be certified every three years. The goal of this is to increase the quality of services that a hospital give to society. UU Cipta Kerja doesn'touch on community health center.

The writers think that, aside from the necessity of harmonization with current regulations in health sector, this draft bill also need to synchronize with UU Cipta Kerja for certain clusters in health sector. This need to be done, because of the potential overlap with UU Cipta Kerja, and this condition must be avoided so that the essence of omnibus law as solving the problem of regulation can be realized.

Conclusion

The omnibus law Health Law has examined further and deeper into health issues, because health issues do not only deal with the mechanisms or techniques of drafting regulations. The omnibus law Health Law must first meet the principles of establishing laws and regulations, both materially and formally. In addition, the omnibus law Health Law must also pay attention to several provisions in the Job Creation Law in the health cluster that amend the Hospital Law and the Health Law.

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