



## POLITICAL IMPLICATIONS AND JURISDICTIONAL CONFLICTS IN IMPLEMENTING THE 2023 HEALTH LAW ON THE MEDICAL PROFESSION IN INDONESIA

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### Abstract

The 2023 Health Law in Indonesia has sparked debate regarding its impact on the Collegium of Medicine and the Indonesian Medical Council (KKI). This paper examines the legal controversies surrounding these institutions within the context of the law. Employing a legal normative approach, the study analyzes health laws and scholarly literature to understand the implications of the 2023 Health Law on the roles and functions of the Collegium and KKI. Findings indicate significant changes in their authority and autonomy, raising concerns about medical education and practice quality. Government intervention and the marginalization of professional organizations pose threats to institutional independence and healthcare service quality. Recommendations include revising the law to restore Collegium and KKI authority while limiting government intervention to uphold constitutional rights. Strengthening communication between the government and medical professionals, enhancing public awareness, and empowering professional organizations are proposed solutions. This research emphasizes the need to balance government regulation with professional independence to ensure quality healthcare delivery in Indonesia.

**Keywords:** Collegium of Medicine, Indonesian Medical Council, Legal Normative Study, Medical Regulation.

### A. Introduction

Aristotle's view in his book 'Nicomachean Ethics' asserts that health is a noble right to be fulfilled by virtuous individuals.<sup>1</sup> Correspondingly, Karl Marx's concept of healthcare fulfillment emerges from the essence of human beings (people's

basic need), to be provided by the state as distributive justice.<sup>2</sup> Building upon these philosophical foundations, it is evident that health becomes a priority for every socialist and democratic nation that upholds Human Rights. Indonesia, as a democratic nation, is no exception, enshrining the right to

<sup>1</sup> Aristotle, et al, The Nicomachean Ethics. fifty-third edition, Oxford World's Classics, Oxford Univeristy Press,Oxford, 2011.

<sup>2</sup> Karl Marx and David McLellan, Das Kapital. Oxford World's Classics, Oxford University Press, Oxford, 2008.



healthcare for its citizens in the 1945 Constitution. In Article 28 of the 1945 Constitution, Indonesia does not discriminate against other nationals regarding healthcare issues, as seen in its normative articles which state, "*Every person has the right to live prosperously both physically and...*", along with other verses addressing Human Rights.<sup>3</sup>

Healthcare provision became a priority for Indonesia post-amendment of the 1945 Constitution, alongside the transition of presidential terms. During Joko Widodo's presidency, the healthcare sector underwent continuous reform and technological advancements to implement social security and healthcare programs for the Indonesian

populace (e.g., the Healthy Indonesia Card).<sup>4</sup> Reforms in healthcare regulations were also rumored since the early years of President Joko Widodo's second term,<sup>5</sup> culminating in mid-2023 with the enactment of a new law by the Indonesian House of Representatives (DPR RI). This law officially repealed 11 previously applicable healthcare-related laws, as part of efforts to unify and simplify regulations in the healthcare sector. The implementation of this law adopted an Omnibus Law format,<sup>6</sup> allowing for the consolidation of several regulations into a single law,<sup>7</sup> thereby facilitating the regulatory process and policy implementation in the healthcare domain.

<sup>3</sup> Constitution of Indonesia 1945.

<sup>4</sup> Asep Suryahadi, and Ridho Al Izzati, "Cards for the Poor and Funds for Villages." *Journal of Southeast Asian Economies*, Vol. 35, No. 2, 2018, p.218.

<sup>5</sup> Sindy Yulia Putri, "The Efforts of the Indonesian Government in the Era of President Joko Widodo's Administration to Enhance the Competitiveness of the Labor Sector." *Jurnal Lemhannas RI*, Vol. 6, No. 3, August, 2020.

<sup>6</sup> Glen S. Krutz, "'Getting around Gridlock: The Effect of Omnibus Utilization on Legislative Productivity.'" *Legislative Studies Quarterly*, Vol. 25, No. 4, 2000.

<sup>7</sup> Muhammad Ihsan Firdaus, "The Omnibus Law Method in the Legal Reform of Legislative Formation in Indonesia (A Comparative Study of Canada, the United States, the Philippines, and Vietnam).", *Jurnal Hukum Ius Quia Iustum*, Vol.30 No. 1, January, 2022.



This new law, known as the "2023 Health Law," raised conflict implications that came under scrutiny following its enactment. This emerging phase was questioned by stakeholders in the medical profession, raising doubts about whether this law aligns with societal aspirations.<sup>8</sup> Does this law truly reflect the needs and hopes of the community in achieving quality healthcare services?

Since the revocation of Law Number 29 of 2004 regarding medical practice, various issues have arisen concerning the unity and grouping of doctors in Indonesia. The Indonesian Medical Association (IDI) asserts that the 2023 Health Law violates principles of unity and freedom of association for doctors nationwide, with

several articles perceived as governmental interference in doctor unity.<sup>9</sup> The revocation of articles from previous laws raised concerns about the loss of authority and guarantees for interested doctor groups, necessary to maintain the continuity of professional practices and education.<sup>10</sup>

IDI has jurisdiction over the medical profession in Indonesia, yet it is often found that IDI is closely linked to medical colleges and the Indonesian Medical Council (KKI), leading to speculation that IDI has acted arbitrarily and dominated under Law Number 29 of 2004. Various lawsuits have been filed with the Constitutional Court, yet IDI's authority has been recognized as a "*Self-regulating Organization*" by the judges of the

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<sup>8</sup> Benyamin Dicson Tungga. "Peranan Dan Tanggung Jawab Pemerintah Dalam Pelayanan Kesehatan Pasca Disahkannya Omnibus Law Tentang Kesehatan." *Nusantara Hasana Journal*, Vol. 3 No. 2, July, 2023.

<sup>9</sup> Hasudungan Sinaga, "Legal Protection Regulation for Doctors According to Law Number 17 of 2023.",

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<sup>10</sup> CNN Indonesia, *IDI Cs Gugat UU Kesehatan ke Mahkamah Konstitusi*, Accessed February, 22, 2024, <https://www.cnnindonesia.com/nasional/20230921223631-12-1002202/idi-cs-gugat-uu-kesehatan-ke-mahkamah-konstitusi>.



Court.<sup>11</sup> By 2023, IDI's authority had been revoked by the 2023 Health Law.

Post-enactment, IDI's concerns revolve around the void and ambiguity in the roles of collegium and KKI in this position. Collegium and KKI play a crucial role in maintaining the stability of education and the profession. It would indeed be hazardous if the government adopted an "Absolutist" approach in lawmaking,<sup>12</sup> as it could disrupt the balance and independence of these institutions.

## B. Problem Statement

The ambiguity and factual discrepancies serve as the catalyst for the author to delve into the political issues and their implications on the collegium and KKI within this paper. The central problem under

investigation is: How do the legal polemics against the collegium and KKI within the 2023 Health Law manifest?

## C. Research Objectives

The objective of this study is to explore the manifestations of legal controversies targeting the collegium and Indonesian Medical Council (KKI) within the framework of the 2023 Health Law. By analyzing the specific provisions and interpretations of the law, this research aims to identify and understand the nature and extent of the legal polemics surrounding the roles and functions of the collegium and KKI within the healthcare regulatory landscape of Indonesia.

## C. Research Methods

The research in this article uses a legal normative study approach, focusing on

<sup>11</sup> MKRI, Concerned About IDI Monopoly, Medical Academics Reviews Medical Practice Law, Accessed February, 22, 2024, <https://en.mkri.id/news/details/2018-10->

<sup>12</sup> Agus Suntoro, and Kania Rahma Nureda, "Omnibus Law: Dominance of Executive Power in Legislative Formation.", *Veritas et Justitia*, Vol. 8, No. 1, June, 2022.



examining health laws and relevant academic literature. This method involves thoroughly reviewing scholarly sources like books, articles, and official governmental documents to gain a deep understanding of the legal framework in healthcare. Through this detailed approach, the research aims to provide a comprehensive understanding of legal complexities in health policy, including their political and societal impacts. Normative analysis is used to evaluate how regulations align with fundamental legal principles and societal values. This approach also helps in crafting nuanced policy recommendations to address various challenges in advancing the healthcare system.

## E. Research Results and Discussion

The Collegium of Medicine serves as a platform for medical education stakeholders

in Indonesia, encompassing both academics and professionals. Established under the Medical Practice Act, the Collegium holds authority aimed at advancing medical practice and education. However, the Collegium's authority has been fragmented due to the 2023 Health Law. Previously, the Collegium faced legal challenges from academics and retired doctors due to perceived domination by professional organizations within the Indonesian Medical Association (IDI). This was evidenced in the Constitutional Court's 2017 ruling, which found no constitutional violations by the professional organizations.<sup>13</sup> It is evident that professional organizations, such as the IDI, did not face obstacles in their capacity as stakeholders within the Collegium.

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<sup>13</sup> Decision of the Constitutional Court Number 10/PUU-XV/2017.



However, with the enactment of the 2023 Health Law, policy issues that were previously elaborated by the Collegium have arisen. The Academic Draft of the 2023 Health Law states that "Collegiums for each health profession, formed by professional organizations for each branch of health science, are tasked with supporting and enhancing the quality of education in their respective fields."<sup>14</sup> This statement appears to align with Article 1 paragraph 13 of the Medical Practice Act,<sup>15</sup> which positions the medical profession within the Collegium and assigns responsibility for establishing medical standards, in conjunction with the Indonesian Medical Council (KKI), as per Article 7 paragraph 2 of the Medical Practice Act.<sup>16</sup> However, a conflicting perspective emerges in the same paragraph of the

academic draft of the Health Law, where an argumentative rejection clause states, "the unification of the Collegium and professional organizations may lead to monopoly and power within a body. On the other hand, unifying the Collegium with professional organizations may stagnate and inhibit the development of health science." This argumentative phrase lacks further elaboration in the academic draft, merely citing reasons for separation without providing evidence of conflicting interests.

Upon closer examination, weaknesses in the validity of these arguments become apparent. The composition of the Indonesian Collegium of Medicine during the 2015-2018 term was not solely comprised of practicing medical academics but consisted of individuals from diverse backgrounds and

<sup>14</sup> DPR RI, *Naskah Akademi Rancangan Undang-undang Kesehatan 2023*, Accessed February, 23, 2024, <https://berkas.dpr.go.id/akd/dokumen/BALEG-RJ-20230216-115014-6297.pdf>.

<sup>15</sup> Law Number 29 of the Year 2004.

<sup>16</sup> *Ibid*



professional practices.<sup>17</sup> Therefore, critical scrutiny of these argumentative statements in the academic draft is warranted, particularly considering the elitist nature of the clauses and their encroachment on the Collegium's independence.<sup>18</sup>

Articles 208 and 209 of the 2023 Health Law starkly contradict the previous Medical Practice Act. These articles usurp the authority previously granted to the Collegium and Council as the executors of medical education in determining medical competency standards.<sup>19</sup> Article 208, paragraph 2, states that the national medical education standards are the prerogative of the minister in charge of education affairs.

Meanwhile, the Collegium, which was the primary stakeholder in the previous Medical Practice Act, is relegated to being a "party involved" in the formulation of these national standards. This change in designation of responsibilities from the Council and Collegium to the government through this recent policy shift is coercive. Article 209 of the 2023 Health Law also contradicts the previous practice stipulated in Article 7 of the Medical Practice Act, where professional education, which should primarily focus on and prioritize the interests of relevant organizations, has now become a matter for the minister and government to handle in this field.<sup>20</sup> Consequently, the Collegium once

<sup>17</sup> Majelis Kolegium Kedokteran Indonesia, Tata kelola (kompendum) 2016, Accessed February, 23, 2024, <https://kolegium-ioa.org/wp-content/uploads/2019/07/IDI-Kompendum-Tahun-2017.pdf>

<sup>18</sup> Tibor R. Machan, "Government Regulation vs. The Free Society." *Business & Professional Ethics Journal*, Vol. 22, No. 1, 2003.

<sup>19</sup> *Ibid.*

<sup>20</sup> Zuhriana K. Yusuf, et al. "Comparison of Medical Professional Education in Indonesia and the United States.", *Equity In Education Journal*, Vol. 4, No. 2, October, 2022.



again becomes a marginalized entity as a mere party involved in its administration.

The government's interest and elitism are most evident in Article 451 of the 2023 Health Law. This article explicitly implies government intervention in the medical Collegium and attempts to undermine its independence. Article 451 states, "Collegiums established by each professional organization will remain recognized until the Collegiums referred to in Article 272, established under this Law, are designated." However, Article 272 stipulates that Collegiums may no longer include members of professional organizations (IDI). The government acknowledges the Collegium's independence, as reflected in the academic draft and the 2023 Health Law, but the

inclusion of this clause seems to compromise the Collegium's independence. The removal of professional organizations from within the Collegium contradicts the Medical Practice Act and may also infringe upon constitutional rights under Article 28E of the 1945 Constitution.<sup>21</sup>

This policy upheaval brought about by the 2023 Health Law necessitates a restructuring of the Collegium, which has been operational for approximately 20 years. The autocratic nature of the Omnibus Law policy is evident in this regard.<sup>22</sup> Reviewing the duties and powers of the Collegium in its compendium, the Collegium has operated effectively in accordance with prevailing policies without overstepping the authority of the Indonesian Medical Council, the

<sup>21</sup> Bahar Eifudllatsani, et al, "Study on the Freedom of Assembly and Association Article 28E Paragraph (3) of the 1945 Constitution Through Social Organizations in Relation to the Theory of People's Sovereignty and Human Rights. *Jurnal Hukum dan Pembangunan Ekonomi*, Vol.7 No1. April, 2019.

<sup>22</sup> Zainal Arifin Mochtar, and Idul Rishan, "Autocratic Legalism: the Making of Indonesian Omnibus Law." *Yustisia Jurnal Hukum*, Vol. 11, No. 1, April, 2022.



profession, and medical academics in Indonesia. However, with the enactment of the 2023 Health Law, significant changes will alter standards, oversight, and the development of future doctors. The IDI's exclusion from the Collegium marks a significant shift in its composition and structure.

Implications for the medical profession also involve the Indonesian Medical Council (KKI). Within the Council, as stipulated in Article 14 of the Medical Practice Law, there are members originating from the collegium. Furthermore, there are changes in authority over the Council in the 2023 Health Law, where in the academic text of the law, the Council's authority is taken over by the Minister of Education absolutely. It is stated in the academic text of the health bill, 'The

function of approving educational standards held by the Medical Council intersects with the function of setting national education standards by the Minister of Education and Culture as regulated in Law Number 12 of 2012 concerning Higher Education. In rectifying this situation, each university as a higher education provider must refer to the National Higher Education Standards set by the Minister of Education, Culture, and Higher Education in the formulation of Health Workforce education standards.

The use of law as a tool of absolutism in the government's political interest for the ruler,<sup>23</sup> because the Council's authority obstructs the Ministry of Education, eventually, through the use of legal products, the functions, duties, and authorities of the Council are eliminated. The Council, which

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<sup>23</sup> Hans Kelsen, "Absolutism and Relativism in Philosophy and Politics." *American Political Science Review*, Vol. 42, No. 5, October, 1948



was previously responsible for maintaining and overseeing the quality of medical education standards, is eventually sidelined by ministers with their own interests.

Elitist provisions against the Council are also evident in the 2023 Health Law. Article 16 of the law, the government takes over the task and competence in improving the quality of professional education assisted by the council and the college. However, in the previous Medical Practice Law, this was carried out by the Council assisted by other colleges. Article 260 of the 2023 Health Law contradicts Article 8 of the Medical Practice Law, in which it is stated that the council still issues registration certificates (STRs) but issuance uses authority above the Council. The phrase 'on behalf of the minister' indicates the superiority of the minister over the council that carries out tasks independently and has authority in previous laws.

Recognition of the independent institution of the Council in Article 1 of the 2023 Health Law is not clearly reflected in this law. Provisions that intervene in authority often appear contradictory when examined and compared with previous regulations. This can be seen especially in Article 270 of the 2023 Health Law, where the formulation of Council members also comes from the central government's choice. Direct government intervention in the Indonesian Medical Council not only indicates a major overhaul of the Council's composition but also depicts a fundamental change in the paradigm of medical profession regulation. With this intervention, the autonomy and independence of the Council as a supervisory body for medical practice standards are threatened. This decision not only tarnishes the integrity of the medical profession but also raises doubts about the



institution's ability to uphold quality and ethics in responsible medical practice.

Similar to the Collegium, the Medical Council also undergoes restructuring to comply with the 2023 Health Law. The inclusion of the phrase 'based on this law' in Article 450 indicates that the post-regulation Council will undergo significant changes compared to its predecessor. In addition to the reduction of the Council's authority in medical practice and education, this step also marks the end of an era for a Council that was previously born independently and had the mandate to safeguard the quality of medicine throughout Indonesia.

### **Closing/Conclusion**

The 2023 Health Law has faced criticism due to the elitist configuration of its

legal provisions, which are feared to have negative implications for the medical profession and the wider society.

Government intervention and the takeover of authority from the collegium and KKI, as outlined in Articles 208 and 209, could weaken their roles in maintaining professional quality and ethics. This has the potential to decrease the quality of healthcare services and endanger patient safety.<sup>24</sup> Elitist intervention and control in this law, as seen in Articles 450 and 451, have engendered mistrust and resistance from medical professions. Their autonomy and independence are threatened, disrupting cooperation and communication between academic and the profession,<sup>25</sup> and hindering joint efforts to improve the quality of

<sup>24</sup> Huriati Huriati, et al, "Literature Review: Quality of Patient Safety Services in Hospitals", *FORUM EKONOMI*, Vol. 24, No. 1, January, 2022.

<sup>25</sup> Jean Bartunek, et al, " Sharing and Expanding Academic and Practitioner Knowledge in Health Care.", *Journal of Health Services Research & Policy*, Vol. 8 No. 2, February, 2003.



healthcare services. The removal of the role of professional organizations and government intervention, as in Articles 16 and 260, could potentially violate the constitutional rights of the medical profession, namely the right to association and expression as per Article 28E of the 1945 Constitution.<sup>26</sup> Such excessive intervention is considered a violation of these rights and contrary to democratic principles.

solution to address these issues needs to prioritize a balance between government regulation and professional independence.<sup>27</sup> Revision of the 2023 Health Law should be done by restoring the authority of the collegium and KKI, limiting government

intervention, and ensuring that the law does not violate the constitutional rights of the medical profession. It is important to enhance communication and cooperation between the government and the medical profession by fostering constructive dialogue,<sup>28</sup> increasing transparency, and involving the medical profession in the policymaking process. Public awareness of the role of the medical profession and the potential dangers of government intervention needs to be heightened through education and active participation in the monitoring and evaluation of health policies.<sup>29</sup> Strengthening professional organizations by enhancing their capacity in advocacy, education, and self-

<sup>26</sup> Nia Kania Winayanti, "The Significance of Article 28 of the 1945 Constitution Regarding the Freedom of Association in the Context of Industrial Relations.", *Jurnal Konstitusi*, Vol. 8, No. 6, May, 2016.

<sup>27</sup> Wilma Silalahi, "Quality Regulation Arrangement to Ensure Legal Supremacy." *Jurnal Hukum Progresif*, Vol. 8, No. 1, April, 2020.

<sup>28</sup> Lilik Nugroho, "The Role of Communication in Conflict Management.", *AL-IDZAAH: Jurnal Dakwah dan Komunikasi*, Vol. 3, No. 2, January, 2022.

<sup>29</sup> Yosep Gede Sutmasa, "Ensuring the Effectiveness of Public Policy Implementation.", *Jurnal Ilmiah Cakrawarti*, Vol. 4, No. 1, February, 2021.



regulation is also a crucial solution.<sup>30</sup> This can be achieved by enhancing cooperation among medical professional organizations and encouraging them to be more transparent and accountable to their members.<sup>31</sup>

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