

Press Release by the Civil Society Coalition for Just Access to Health:

**Postpone the Ratification of the Health Bill:
Advance and Ensure Meaningful Public Participation**

Jakarta, June 13, 2023 — The Civil Society Coalition for Just Access to Health urges the Parliament (*Dewan Perwakilan Rakyat/DPR*) and the government to postpone the ratification of the Health Bill (Omnibus Law). Since its introduction to the public, this bill has been a subject of significant controversy as it does not prioritize the interests of the people and is not oriented towards protecting and fulfilling the rights to public health, which are mandated by the constitution.

After reviewing the public communications released by the government and studying the draft of the Health Bill and the proposed List of Problem Inventories (*Daftar Inventaris Masalah/DIM*) by the government, we have noted at least seven reasons for postponement, as follows:

First, the discussion of the bill was closed and lacked meaningful public participation. The DIM released by the Ministry of Health mentions that out of 478 articles in the Health Bill, there are 3,020 items of DIM on the bill's body text: 1,037 remain unchanged, 399 underwent editorial changes, and 1,584 underwent substantive changes. However, despite having been discussed since August 2022, the DIM was only known to the public in March 2023. To date, the government has not presented the latest draft of the Health Bill to the public. The text published by the Ministry of Health through its channel of participation, sehat.kemkes.go.id, is a text from February 2023. The Ministry of Health has stated that this text has undergone several changes.¹

This clandestine formulation of the Health Bill did not allow meaningful public participation. The formulation of the Health Bill also did not involve all stakeholders—such as professional organizations; youth, women, and mothers groups; experts; academics; scientists; and disability groups—that would meaningfully ensure the health interests of all groups of citizens are protected in the Health Bill. The process should have involved public participation from the beginning of the discussion, rather than merely disseminating a drafted version.

Referring to the Constitutional Court Decision (MK) No. 91/PUUXVIII/2020, meaningful public participation goes beyond the right to be heard, but also examines the extent to which the government considers citizen's rights to provide opinions (the right to be considered). Even if their opinions were not accommodated, the public has the right to receive an explanation or answer to the opinions provided (the right to be explained). However, the government and the DPR have not fulfilled this in formulating the Health Bill.

Meaningful public participation is crucial to ensuring legislation that upholds social justice and protects public health. In addition, a non-participatory process deviates from the mandate of Law No. 13 of 2022 concerning the formation of legislation. Therefore, the ratification of the Health Bill should be postponed until the government and the DPR commit to a design and discussion process that adheres to principles of openness, honesty, humanity, and justice.

Second, there is a lack of urgency for ratifying an omnibus Health Bill. The DIM of the Health Bill does not sufficiently explain the urgency for using the omnibus law method by merging 10 (ten) regulations. The fundamental problems that form the basis for the necessity of creating an omnibus law are not apparent.

¹ partisipasissehat.kemkes.go.id diakses pada 12 Juni 2023 (13:52 WIB)

Hence, the health transformation ideas put forward by the Ministry of Health through the Health Bill need to be comprehensively reassessed.

The shortened discussions, abruptness, and lack of transparency despite the broad scope of the Health Bill on the one hand, and the government's public communication that tends to focus on issues related to professional organizations on the other, have confused and made it difficult for the public to understand its content. The dominant issue of professional organizations conceals other important matters, such as the issues mentioned in this press release and other important issues raised by various organizations. This dominant issue also obscures the threat of neglecting the fulfillment of the right to health.

Third, the Health Bill tends to instigate liberalization of the healthcare system and expand privatization and commercialization of healthcare services, turning healthcare, including healthcare professionals, into commodities. The commercialization of the healthcare sector not only has the potential to centralize the healthcare market, especially in urban areas, but also has the potential to widen the healthcare access gap in the Frontier, Outermost, and Disadvantaged (*Terdepan, Terpencil, Tertinggal/3T*) regions of Indonesia. This contradicts the goal intended by the bill, which is to expand the provision of healthcare services to all regions of Indonesia, including the 3T areas.

The text of the Health Bill strongly encourages ease of investment in healthcare services, medical education, and pharmaceuticals, which has the potential to disregard the importance of protecting public health interests. This aligns with the proposal made by the Indonesian Chamber of Commerce and Industry (*Kamar Dagang Indonesia/Kadin*) to the government in late 2021² to establish an omnibus law in the healthcare sector following the lack of interest from foreign investors to invest in the domestic healthcare industry due to the minimal discussion of the healthcare industry in the Job Creation Law (*Cipta Kerja/Ciptaker*). Additionally, according to a report by *Bisnis Indonesia*, Kadin hopes that the omnibus law in the healthcare sector will cover regulations related to medical education and hospital development. Once again, this is consistent with the current content of the Health Bill.

Even before the bill is passed, the government (Ministry of Health) has already signed a Memorandum of Understanding (MoU) with the Bill & Melinda Gates Foundation (BMGF) for a healthcare service transformation agenda involving the private sector on June 8th. With this, the government is forcing the public to accept the Health Bill without knowing its content and consequences.

Fourth, the Health Bill eliminates the potential allocation of a minimum healthcare budget, which can have an impact on the decreasing support for healthcare services. Article 171, paragraphs 1 and 2, of Law No. 36 of 2009 concerning Health stipulates a minimum allocation of 5% of the state budget (*Anggaran Pendapatan Belanja Negara/APBN*) and 10% of regional budgets (*Anggaran Pendapatan Belanja Daerah/APBD*) outside of salaries, prioritized for public services. In the government's version of the Health Bill draft (Article 420, paragraphs 2 and 3), the provision for a minimum allocation of 10% of APBN and 10% of APBD, as stated in the DPR version of the draft bill, is removed, accompanied by several reasons, one of which is that too many mandatory state expenditures result in a narrow and inflexible/inefficient APBN/APBD capacity. The Health Bill proposes to abolish the minimum budget allocation for the healthcare sector resulting from long-fought reforms by the public.

² Liputan Bisnis Indonesia Desember 2021
<https://ekonomi.bisnis.com/read/20211214/12/1477310/investasi-asing-minim-kadin-usul-bentuk-omnibus-law-kesehatan> diakses pada 12 Juni 2023

The removal of the provision for a minimum budget allocation contradicts the purpose of the Health Bill, which is to expand and improve the quality of healthcare services in rural areas, including the 3T regions (frontier, outermost, and disadvantaged), which undoubtedly require increased healthcare financing that demands an adequate budget allocation. The elimination of the minimum budget allocation will lead to a situation where the fulfillment of the right to healthcare depends on the "goodwill" of central and regional authorities. However, the fulfillment of the right to health is the state's obligation, and that obligation is demonstrated by the existence of a minimum budget allocation for the healthcare sector. The absence of a minimum budget allocation can result in reduced healthcare funding that consequently worsen healthcare services. If this bill is passed, the most affected groups will be the poor, people with disabilities, vulnerable groups, including women and children, and communities in 3T areas.

Fifth, the centralization of healthcare governance by the central government can reduce the independence of knowledge in the healthcare sector. In the narrative document of the Health Bill, there are several clusters that include proposals to expand the authority of the central government, including proposals to expand the government's authority in healthcare professions. Education and training for improving the competence of healthcare professionals and the collegiate bodies that oversee the body of knowledge of healthcare professions have been independent thus far. Bringing them all under the authority of the central government threatens the independence and advancement of that body of knowledge. Additionally, it places the governance of healthcare human resources under the control of the Ministry of Health from top to bottom. This absolutism of power has the potential for abuses of power against healthcare professionals.

The government criticizes professional organizations as the main problem in the healthcare system in Indonesia. While improvements are certainly needed, with this Health Bill, the government takes over all functions and roles of professional organizations, collegiate bodies, the Medical Council, and the Council of Healthcare Professionals and places them in the hands of the Minister of Health (*Menteri Kesehatan*/Menkes). In other words, the government is doing what it criticizes itself, merely transferring the problem from one actor (professional organizations) to another actor (Menkes).

Sixth, the substance of the bill itself contains various contradictions that, if ignored, will clearly make this bill fail to achieve its goals. Hasty and careless drafting and deliberation of the bill will only waste the already limited resources of the country. Some of these contradictions include the expansion and improvement of healthcare services to the village level vs. the elimination of minimum budget allocations from the state and regional budgets for the healthcare sector; the dominance of professional organizations vs. the dominance of the Minister of Health; the acceleration of local doctor production vs. the ease of entry for foreign doctors; the increased role of the state vs. the expansion of the role of the private sector; economic considerations vs. considerations of human rights values.

Furthermore, the Ministry of Health, as mandated by the Health Bill, is responsible for controlling the potential abuse of services and the cost control of healthcare services for participants, healthcare facilities, and the National Health Insurance (*Badan Penyelenggara Jaminan Sosial*/BPJS Kesehatan). However, looking at the current situation, we see that healthcare funding management does not follow principles of transparency and inclusivity, and often the quality of services is not optimal. One of the problems in the implementation of the National Health Insurance (*Jaminan Kesehatan Nasional*/JKN) managed by BPJS Kesehatan is the out-of-pocket expenses for participants. The government has been given the authority to determine the tariff rates to be paid to healthcare facilities through the Indonesian Case Base Groups (INA-CBGs) scheme. However, there are components in this scheme that are not covered by the government and lead to high out-of-pocket expenses for the public. This control also seems to exclude the active participation of the public in monitoring the implementation of the JKN program.

Seventh, the Health Bill does not adequately address the issue of corruption and various forms of fraud in healthcare services. Corruption and all forms of fraud are significant problems in healthcare services. Throughout 2022, law enforcement agencies have at least handled 27 corruption cases related to health, with a state loss of approximately IDR 73.9 billion.³ These numbers have been increasing year after year. Cases handled by law enforcement agencies are generally related to infrastructure development (especially the construction of community health centers) and the procurement of medical equipment. Beyond the cases addressed by law enforcement, corruption and healthcare fraud are believed to occur more extensively and significantly affect the suboptimal quality of healthcare services and the high cost of public access to quality healthcare. This includes collusion and gratification practices in prescribing drugs, as well as the registration and licensing of medical and healthcare practitioners.

Unfortunately, the bill that claims to reform healthcare services in the future does not sufficiently address and mitigate the issue of fraud in the healthcare sector. For example, it fails to address efforts to improve price transparency for drugs in all healthcare facilities or to prevent and address collusion and gratification practices involving pharmaceutical companies, among other issues. For civil servant doctors, prevention of gratification is regulated by Law No. 20 of 2001 and Law No. 5 of 2014. Ideally, this bill should fill the legal gap regarding gratification for private doctors.

We emphasize these fundamental issues because of the lack of meaningful participation, the weakening of protective budgeting obligations towards citizens, the commodification of healthcare services, and especially this bill facilitates potential corruption which clearly constitutes a violation of the right to health as a human right mandated by the Republic of Indonesia's Constitution. (ends)

Civil Society Coalition for Health Access Justice

1. YLBHI
3. Ecosoc Institute
4. IM57+ Institute
5. Pusat Kajian Hukum dan Keadilan Sosial (LSJ) FH UGM
6. Indonesia Corruption Watch
7. Transparency International Indonesia
8. LaporanCovid-19
9. The PRAKARSA
10. Yayasan Penguatan Partisipasi, Inisiatif, dan Kemitraaan Masyarakat Indonesia (YAPPIKA)
11. Pusat Studi Hukum dan Kebijakan Indonesia (PSHK)
12. Pusat Studi Hukum HAM (HRLS) FH UNAIR
13. Pusat Studi HAM (PUSHAM) UII
14. Yayasan Peduli Sindroma Down Indonesia (YAPESDI)
15. Lembaga Bantuan Hukum Masyarakat (LBHM)
16. SIGAB Indonesia
17. Forum Masyarakat Pemantau untuk Indonesia Inklusif Disabilitas (FORMASI Disabilitas)

³ Indonesia Corruption Watch, Laporan Hasil Pemantauan Tren Penindakan Kasus Korupsi Tahun 2022 (link: <https://antikorupsi.org/sites/default/files/dokumen/Narasi%20Laporan%20Tren%20Penindakan%20Korupsi%20Tahun%202022.pdf>), diakses pada 12 Juni 2023 (21:45 WIB)

18. Komunitas Spinal Muscular Atrophy Indonesia.
19. Pergerakan Difabel Indonesia untuk Kesetaraan (PerDIK)
20. Lembaga Studi dan Advokasi Masyarakat (ELSAM)
21. Trade Union Rights Centre (TURC)
22. Yayasan Kurawal
23. Gerakan untuk Kesejahteraan Tunarungu Indonesia (GERKATIN)
24. Yayasan Peduli Distrofi Muskular Indonesia (YPDMI)
25. Yayasan Revolusi dan Edukasi untuk Inklusi Sosial Indonesia (REMISI)
26. KASIH RUMALA Group
27. Ohana Indonesia
28. TERALA
29. SAPDA
30. CIQAL
31. Perhimpunan Jiwa Sehat (PJS)
32. Himpunan Wanita Disabilitas Indonesia (HWDI)
33. Lembaga Penelitian, Pendidikan dan Penerangan Ekonomi dan Sosial (LP3ES)
34. Pemberdayaan Tuli Buta (PELITA) Indonesia
35. PPDJ Padang
36. Persatuan Tuna Netra Indonesia (Pertuni)
37. Lentera Anak
38. Indonesian Youth Council for Tactical Changes (IYCTC)
39. Komite Nasional Pengendalian Tembakau (Komnas PT)
40. Yayasan Lembaga Konsumen Indonesia (YLKI)
41. Perhimpunan Bantuan Hukum dan HAM Indonesia (PBHI)
42. Forum Warga Kota (FAKTA) Indonesia
43. Masyarakat Hukum Kesehatan Indonesia (MHKI)