



## THE IDEA OF THE HEALTH OMNIBUS LAW AS A NATIONAL LEGAL POLICY IN AN EFFORT TO INCREASE PUBLIC HEALTH DEGREES IN INDONESIA

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### ABSTRACT

This study aims to examine the ontological aspects of health promotion in an effort to improve public health status and to analyze the health sector in the General Agreement on Trade in Services. This research also aims to offer the idea of omnibus law health as a national legal policy in an effort to improve public health status in Indonesia. This article uses normative legal research methods using statutory approaches, conceptual approaches, and analytical approaches. The study indicates that the idea of an omnibus law on health as a national legal policy in an effort to improve public health status in Indonesia is a challenge as well as an opportunity. Considering that the health service sector has an important contribution to the sustainable development goals presented by the United Nations, that is, one of the goals of sustainable development is for a healthy and prosperous life. Therefore, it is necessary to revise and harmonize regulations both nationally and internationally which are based on Pancasila values to ensure that the mission is realized to improve public health in a comprehensive manner that is equitable, fair, and affordable and has legal certainty.

**Keywords :** alternative policy; health; Indonesia; omnibus law; public

### 1. INTRODUCTION

The concept of the omnibus law is a common thing in establishing laws and regulations. Omnibus comes from the Latin word “omnis”, which means all.<sup>1</sup> This concept has inspired many legislators in Anglo-Saxon countries. Even several countries that adhere to the Continental European legal system have also used this method, inter alia: the United States of America (The Omnibus Act of June 1868, The Omnibus Act of February 22, 1889), Canada (Criminal Law Amendment Act, 1968- 69), Philippines (Tobacco Regulation Act of 2003), Argentina, Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, The Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, and Thailand.<sup>2</sup>

In Indonesia, the discourse on the use of the omnibus law method was conveyed by the President of the Republic of Indonesia, Ir. H. Joko Widodo in 2019 in his state speech at the inauguration as President before the People’s Consultative Assembly session on 20 October 2019. Omnibus law is the focus of the president to be able to resolve overlapping regulatory and bureaucratic problems. It is hoped that the omnibus law will provide good service to the community and attract foreign investors to invest in Indonesia.<sup>3</sup>

The beginning of the omnibus law scheme in Indonesia was an adjustment to the pace of investment that led to the achievement of a goal of simplifying the entrance for foreign investors to carry out activities in Indonesia. It is proven by the directives of Indonesian president Joko Widodo that there will be 3 laws that will be made as a form of omnibus law namely taxation, creating jobs, and empowering MSMEs. However, the

- 1 Ricca Anggraeni and Cipta Indra Lestari Rachman, *Omnibus Law in Indonesia : Is That the Right Strategy* (International Conference on Law, Economics and Health (ICLEH) Atlantis Press, 2020), 82.
- 2 Agnes Fitryantica, “Harmonisasi Peraturan Perundang-Undangan Indonesia Melalui Konsep Omnibus Law,” *Gema Keadilan* 6, no. 3 (2019): 300–316.
- 3 Adhi Setyo Prabowo et al., “Politik Hukum Omnibus Law Di Indonesia,” *Jurnal Pamator: Jurnal Ilmiah Universitas Trunojoyo* 13, no. 1 (2020): 1–6.

concept underwent a significant shift. This is heavily influenced by the existence of laws in Indonesia which often overlap and there is disharmony between laws and regulations with one another, both horizontally and vertically.<sup>4</sup>

Based on the research of legal materials obtained, there are several types of laws and regulations passed, including 7,621 Ministerial Regulations passed from October 2014 to 2018, 765 Presidential Regulations passed in the last four years, and 452 Government Regulations that have been passed and enacted in recent years. Knowing the many types of laws and regulations enacted in Indonesia, this then became a historic record which then by the World Bank on the Regulatory Quality Index positioned Indonesia at 92 out of 193 as a country with a hyperregulation state position.<sup>5</sup>

Regarding the plan to draft a health omnibus law that will be regulated in the Draft Law on Health, it aims to provide reinforcements for health regulations, which are currently still divided into a number of different laws.<sup>6</sup> Pros and cons related to this discourse continue to roll, especially the rejection by the health profession. The basic principle in Health is the harmonization of regulations in the Health sector. Regulatory simplification is very important to do. The Government's efforts to adopt the omnibus law on health as a national legal policy in the hope of achieving a goal of improving the hierarchy of public health in Indonesia is the best challenge and opportunity in the future.<sup>7</sup> Also related to the General Agreement on Trade in Services (hereinafter abbreviated as GATS) is one of the agreements in the field of international trade which aims to expand the level of liberalization in the services sector.

Based on the background description above, gives the author inspiration and ideas to make an event that has the potential to cause legal problems and pour it as an article entitled "The Idea of The Health Omnibus Law as A National Legal Policy in An Effort to increase Public Health Degrees In Indonesia" with the formulation of the problem is How ontological aspects of health promotion in efforts to improve public health degrees? How health in the GATS sector? And, how the idea of the omnibus law on health as a national legal policy in efforts to improve public health degrees in Indonesia.

The purpose of this research is to determine ontological aspects of health promotion in efforts to improve public health degrees, health in the GATS sector, as well as the idea of the omnibus law on health as a national legal policy in efforts to improve public health degrees in Indonesia.

A previous study was conducted by Antoni Putra in 2020 which examined the "*Penerapan Omnibus Law Dalam Upaya Reformasi Regulasi*".<sup>8</sup> The focus of the study in this research is regarding the application of the omnibus law concept in an effort to reform regulations in a better direction. In 2021, Kana Purwadi, Hendra Sukarman, and Dhaneswara Awindra Wijaya examined "Legal Certainty: Fulfillment of Human Rights Regarding Health Within Omnibus Law Through Hospital Accreditation".<sup>9</sup> The focus of the study in this research is regarding the legal certainty of fulfilling human rights to health in the Omnibus Law through hospital accreditation arrangements and the urgency of establishing the Pancasila law.

From the description above, it can be concluded that there are no significant similarities because this research focuses on discussing the idea of health omnibus law as a form of national legal policy in an effort to improve public health status in Indonesia which contains ontological aspects of health promotion in an effort to improve public health status is one of the important elements in improving general welfare, health in the GATS

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4 Zaka Firma Aditya and Abdul Basid Fuadi, "Konseptualisasi Omnibus Law Dalam Pemindahan Ibukota Negara," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 1 (2021): 64.

5 Eka Nam Sihombing and Muhammad Yusrizal Adi Syaputra, "Implementasi Penggunaan Kecerdasan Buatan Dalam Pembentukan Peraturan Daerah," *Jurnal Ilmiah Kebijakan Hukum*, 2020, 421.

6 Weppy Susetiyo and Anik Iftitah, "Peranan dan Tanggungjawab Pemerintah dalam Pelayanan Kesehatan Pasca Berlakunya UU Cipta Kerja," *Jurnal Supremasi*, August 31, 2021, 92–106.

7 Rio Christiawan, *Omnibus Law Teori Dan Penerapan* (Jakarta: Sinar Grafika, 2021), 96.

8 Antoni Putra, "Penerapan Omnibus Law Dalam Upaya Reformasi Regulasi," *Jurnal Legislasi Indonesia* 17, no. 1 (2020): 1–10.

9 Kana Purwadi, Hendra Sukarman, and Dhaneswara Awindra Wijaya, "Legal Certainty: Fulfillment of Human Rights Regarding Health Within Omnibus Law Through Hospital Accreditation," *Jurnal Dinamika Hukum* 21, no. 2 (2022): 30.

sector is the result of service trade commitments that have great potential to be utilized and the idea of health omnibus law as a national legal policy in an effort to improve public health status in Indonesia is to conduct international trade in health services.

The purpose of this research is to examine the ontological aspects of health promotion in an effort to improve the degree of public health; health in the GATS sector; and the idea of omnibus law in the field of health as a national legal policy in an effort to improve the degree of society in Indonesia. So it is necessary to make changes and harmonize regulations nationally while maintaining the values of Pancasila. Therefore, the problems that will be discussed in this paper include: first, to what extent is the ontological aspect of health promotion in an effort to improve the degree of public health? Then, secondly, how is health in the GATS sector? As well as, how is the idea of omnibus law in the field of Health as a national legal policy in an effort to improve the degree of society in Indonesia. Based on the above problems, the researcher will pour it into a research entitled “The Idea of The Health Omnibus Law as A National Legal Policy in An Effort to Increase Public Health Degrees in Indonesia”.

## 2. METHOD

This article uses normative legal research methods using statutory approaches, conceptual approaches, and analytical approaches. Legal material search techniques use literature study techniques, as well as analysis of studies using qualitative analysis. Referring to Peter Mahmud Marzuki, normative research is seen as a process to find legal rules, legal principles, or legal doctrines to answer legal problems that occur.<sup>10</sup>

## 3. FINDINGS AND DISCUSSION

### 3.1 Ontological Aspects of Health Promotion in Efforts to Improve Public Health Degrees

Ontologically, health is one of the elements that is considered important in the general welfare. According to Article 1 point 1 of Indonesia Law No. 36 of 2009 concerning Health (*hereinafter* Health Law), it is stated that “Health is a health condition, physically, mentally, spiritually and socially so that enabling any person to live a productive life socially and economically”.<sup>11</sup>

Health development is always directed at increasing the degree of public health. One of the bases of health promotion in Indonesia is the Jakarta Declaration which formulates health promotion priorities for the 21<sup>st</sup> century, namely optimizing social responsibility specifically in the health sector, optimizing investment activities in the formation of health, and disseminating cooperation in the health sector, optimizing community loading power and empowering individual personnel and securing and providing guarantees for the availability of health advertisement infrastructure.<sup>12</sup> This Declaration formulates :

1. Health promotion is the main investment that has an impact on health determinants, providing the greatest health benefit to society.
2. Health promotion provides positive results that are different from other efforts in increasing equity for the community in health.
3. Increasing social responsibility in health, increasing investment for health development, consolidating and expanding partnerships for health, increasing community capacity and empowering individuals, and ensuring the availability of health promotion infrastructure. Health education is an important component of health promotion.<sup>13</sup>

Furthermore, referring to the Ottawa Charter which is the result of the First Health Promotion International Conference in Ottawa, Canada. Three main strategies must be implemented in health promotion,

10 Fajar M, *Dualisme Penelitian Hukum Normatif & Empiris* (Yogyakarta: Pustaka Pelajar, 2013), 90.

11 Hernadi Affandi, “Implementasi Hak Atas Kesehatan Menurut Undang-Undang Dasar 1945: Antara Pengaturan Dan Realisasi Tanggung Jawab Negara,” *Jurnal Hukum Positum* 4, no. 01 (2019): 36–56.

12 Ditha Prasanti, “The Communication Barriers In The Health Promotion Of Family Planning Program (KB) Iud In Bandung,” *Jurnal Penelitian Komunikasi Dan Opini Publik* 22, no. 1 (2018): 15.

13 Henni Febriawati, *Puskesmas Dan Jaminan Kesehatan Nasional* (Yogyakarta: Deepublish, 2019), 35.

namely advocacy, atmosphere building, and empowerment.<sup>14</sup> Those strategies shall be carried out in the form of actions namely developing policies with healthy public policy, namely seeking to make policy makers in various sectors at every level of administration establish policies taking into account the impact on public health then create an environment a supportive environment, namely striving for every sector in carrying out its activities to lead to the realization of a healthy physical and non-physical environment, strengthening community action by providing support for community activities so that they are more empowered in controlling factors that affect health, developing personal skills, namely striving for every individual in society to know, want and be able to make effective decisions in an effort to maintain, improve and realize their health, through the provision of information, as well as adequate education and training, reorienting the direction of health services, namely changing the mindset and public health service system therefore it prioritizes promotive and preventive aspects, without neglecting curative and rehabilitative aspects.<sup>15</sup>

Health promotion is an effort to improve health which includes promoting, supporting, encouraging, and placing health higher on the agenda of individuals and the general public. According to Notoatmodjo, health promotion is essentially an activity or effort to convey health messages to community groups or individuals. The implementation of health promotion according to Ginting, et.al in the Health Promotion Guide of the Ministry of Health of the Republic of Indonesia is known to have 3 types of targets, namely primary targets, secondary targets, and tertiary targets.<sup>16</sup> One of the efforts and important elements to maximize the concept of community-based health promotion and prevention is to provide empowerment aimed at the direct community as the primary target of health promotion. The goal is that people have the ability to maintain and improve their own health. In an effort to make it complete, it is necessary to carry out a study and related in-depth study in the context of the ability to identify the characteristics of the community of each community including education, values of life in the community itself, beliefs, community cultural structures and the ability to identify the main problems in the community. Community and the ability to collaborate with other professionals, including members of the community itself.

According to Ottawa Charter, "Health promotion is a process that allows individuals to improve their health status".<sup>17</sup> This includes being physically, mentally, and socially healthy so that individuals or communities can realize their goals, meet their needs, and change or overcome their environment. Health is a resource of life not just an object for living. Health is a positive concept that cannot be separated from social and personal strengths. Hence, health promotion is not only responsible for the health sector, but also for a healthier lifestyle.

Contemporary public health approaches are community-based for health promotion and disease prevention. The current mode of health promotion prioritizes community-based policies using multiple intrusions as the main tactic to achieve population-level transformation in risk and health behaviors.<sup>18</sup>

Over the past decade there has been a fundamental focus on community and population approaches, specifically focusing on the individual to other behaviors that fall within the scope of social and environmental influences as in the health ecology scheme of things, this includes an emphasis on explaining health behaviors. The scope of the ecological model includes interpersonal, organizational, societal, and policy-level influences that are classified as ecological schemes based on the premise that individual behavior is formed by dynamic interactions with the social environment.<sup>19</sup>

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- 14 Makmur Makmur, Treesia Sujana, and Angkit Kinasih, "Strategi Program Kesehatan Puskesmas Di Sekolah Dasar," *Jurnal Ilmu Keperawatan Dan Kebidanan* 8, no. 2 (2017): 33.
  - 15 Juwita Mandasari, Linda Ishariani, and Eko Arik Susmiatin, "Gambaran Pelaksanaan Promosi Kesehatan Tumbuh Kembang Balita Di Puskesmas Se-Kabupaten Kediri," in *Prosiding Seminar Penelitian Kesehatan*, vol. 1, 2019, 17.
  - 16 Indah Pratiwi Wibawati, "Implementasi Kebijakan Promosi Kesehatan (Studi Pada Pusat Kesehatan Masyarakat Dinoyo, Kecamatan Lowokwaru, Kota Malang)" (Brawijaya University, 2014), 22.
  - 17 Adila Rahana and Rachmat Hargono, "Peran Puskesmas Dalam Implementasi PHBS Di Sekolah Pada SLB Alpa Kumara Wardana II," *Jurnal Promkes* 6, No. 1 (2018): 59–69.
  - 18 Indah R, *Promosi Kesehatan Dalam Berbagai Perspektif* (Aceh: Syiah Kuala University Press, 2022), 306.
  - 19 Redaksi W.K.D, "Ekologi Kesehatan" 18, no. 2 (2019): 15.

The output produced later is community support and capacity that can participate in prevention activities, this is also the idea of community empowerment as well as an integral part of the health advertisement model-based or based on the community that plays an important role in the future.

The program is not limited to involving community leaders, social networks, mass communication campaigns, and direct education of the general population, in addition to medical care arrangements as an integral part of an integrated and comprehensive community-based prevention program. In addition, to achieve policy and environmental changes as well as targeted changes among individuals, groups, and organizations, this community-based program is expected to achieve these goals.<sup>20</sup>

Some of the things that then become the success of this community-based health program can be formulated including mobilizing the community so that they can actively participate in the process of achieving the objectives of this program, the implementation of interventions can be applied to various community settings using intervention strategies. The application of interventions can be carried out in various places such as workplaces, places of worship, places of health services to places of study. Meanwhile, intervention strategies that can be used can be applied starting from the individual level through contests, competitions, self-help programs, mass media platforms, and screening. This can also be developed by marking as a distinctive characteristic of restaurant menus, supermarket shelf labels for heart-healthy foods, and policy initiatives. The concept of community-based health promotion and prevention can be carried out in stages and continuously. The most important and supporting factor in the success of this program is the hope that the community will have a positive perception of a healthy lifestyle. This program is also inseparable from the important role of community leaders and health cadres because they are the driving forces of the community in every activity.

Besides that, it also needs a basis for government policies, one of which is using law as a tool to engineer the social life of the community. Community empowerment is a health promotion strategy that is carried out by developing and optimizing the potential that exists in the community by involving them from the start of the program. The main goal is to realize the ability of the community to maintain and improve their own health.

Health promotion efforts are a shared responsibility, not only in the health sector alone but also across sectors, society, and the business world. Health promotion needs to be supported by all stakeholders. The common understanding, effectiveness of cooperation, and synergy between central, provincial, district/city, and village health officials and all parties from all components of the nation are very important to achieve the vision, goals, and objectives of national health promotion. All of this is in the framework of a Healthy Indonesia, namely an Indonesia whose people live in a healthy manner and culture, in a clean and conducive environment, and have access to quality health services, so they can live a prosperous and productive life.<sup>21</sup>

In Indonesia, forms of community-based health promotion and prevention activities are a very important part and can even be said to be the spearhead. Referring to the sources of the Indonesian Ministry of Health in the health promotion literature in health problem areas Guidelines for Health Workers at Puskesmas, community-based empowerment is the process of providing information to individuals, families, or groups continuously and continuously following the client's development, as well as the process of helping clients, so that the client changes from not knowing to knowing or being aware (knowledge aspect), from knowing to being willing and from willing to being able to carry out the introduced behavior (practice aspect). In accordance with the client's goals, individual empowerment, family empowerment, and group/community empowerment can be distinguished.

In trying to make the client know and aware, the key lies in the success of making the client understand that something is a problem for him and his community. As long as the client is not aware and does not realize that something is a problem, then the client will not be willing to accept any further information. At the time that the client is aware of the problem he is facing, then he should be given further general information about the problem in question.

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20 John P Elder et al., "Community Heart Health Programs: Components, Rationale, and Strategies for Effective Interventions," *Journal of Public Health Policy* 14, no. 4 (1993): 463.

21 Widiyaningsih D and Suharyanta, *Promosi Dan Advokasi Kesehatan* (Yogyakarta: Deepublish, 2020):11

In this case, the person concerned can be given direct assistance. But what is often practiced is inviting them into the process of empowering groups/communities through a community organization or community development.

A number of individuals and families who are willing to do so, gathered in a group to work together to solve the difficulties encountered. Not infrequently these groups also still need help from outside. Herein lies the importance of synchronizing health promotion with the health programs it supports and other related sector programs. The things that will be given to the community by health programs and other programs as assistance, should be conveyed at this phase, not before. The assistance should also be in accordance with what is needed by the community.

Establishing partnerships with non-governmental organizations (NGOs), especially those engaged in health or concerned about health, is one of the influences on the success of empowerment. The existence of several NGOs that are willing to cooperate both involving the institution itself and working with the government is a potential effort for successful empowerment. If this has been achieved, then move on to using communication methods and media that are tailored to the characteristics of the target situation and conditions.

Bina Susana is an effort that aims to create a social environment that directs individuals as members of the community to be willing to apply the rules that have been socialized to regulate the behavior patterns of the local community.<sup>22</sup> A person will be compelled to want to do something if the social environment wherever he is (family at home, student/student organizations, trade unions/employees, people who are role models/idols, social gathering groups, religious assemblies, and others, and even the general public) approve or support such behavior. To strengthen the empowerment process, especially in an effort to increase individuals from the knowing phase to the willing phase, it is necessary to carry out *Bina Suasana*. There are three categories of *Bina Suasana* processes, namely:<sup>23</sup>

- a. Individual *Bina Suasana* is carried out by individual local community leaders where in this category community leaders become role models or rule models in terms of behavior that is introduced or socialized.
- b. Group *Bina Suasana* is carried out by groups in the community, such as Neighborhood Association administrators, Community Association administrators, taklim assemblies, professional organizations, women's organizations, student organizations, youth organizations, trade unions, and others.
- c. Public *Bina Suasana* is carried out as well as the previous category, namely by the general public with the intermediary of partnership development and utilizing existing media in the hope of building public opinion. The media in question can be radio, television newspapers, magazines, internet sites, and other media that have a sense of concern and desire to support the behavior of the community to be introduced.

Advocacy is a strategic and organized effort or process as an introduction to gaining commitment and support from parties that will be related to the program implemented by the community. The parties referred to in this case are not limited in nature, it can involve formal/informal community leaders who will act as resource persons or are better known as opinion leaders. In addition, it can also involve policymakers/funders. However, it should be underlined that the commitment and support sought through advocacy takes a long time because it requires the participation of influential figures in the community.

In the course of advocacy, several stages must be passed systematically, namely the existence of problems that must be known and realized in detail, conscious interest in participating in finding solutions to existing problems, having a high sense of concern to find solutions to existing problems by participating in considering possible solutions that can be applied, agreeing to solve the problem by choosing one of the alternative solutions to the problem, deciding on a follow-up agreement. Thus, advocacy must be carried out in a planned, careful and precise manner.

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22 Rasyika Nurul Fadriah and Shendy Krishnasari, "Bina Suasana Untuk Kesuksesan Pemberian ASI Eksklusif Pada Masa Pandemi Covid-19 Di Kelurahan Baru Kecamatan Palu Barat Kota Palu," *Jurnal Dedikatif Kesehatan Masyarakat* 2, no. 1 (2021): 29–34.

23 Ratih Gayatri Setyabudi and Mutia Dewi, "Analisis Strategi Promosi Kesehatan Dalam Rangka Meningkatkan Kesadaran Hidup Sehat Oleh Rumah Sakit Jiwa Daerah Dr. RM. Soedjarwadi Provinsi Jawa Tengah," *Jurnal Komunikasi* 12, no. 1 (2017): 87.

The preparation of material in advocacy efforts must be carefully and systematically assembled by considering the existing problems, this arrangement can be formulated, namely: 1) there is a match between the interests and concerns of the advocacy target, 2) there is a problem formulation based on the background of the problem accompanied by an alternative problem solving or solution to be applied, 3) there is a target role in the application of solutions based on existing facts or evidence-based, 4) the whole must be packaged neatly, interestingly, clearly or in other words must be systematic as time is available, 5) must establish good relations with partners to continue to build good cooperation and continue to get support in the context of empowerment and atmosphere building and advocacy. It is also important to note that partnerships must be guided by three basic principles, namely equality, openness, and mutual benefit. By applying these three principles, it can expand partnerships between individuals, families, officials or government, cross-sectoral, community youth leaders, and mass media related to health affairs.

### 3.2 Health in the GATS Sector

In 1994, Indonesia ratified the Agreement of World Trade Organization Establishment (*hereinafter* WTO Agreement) and officially stated its commitment in Law Number 7 of 1994 concerning the Ratification of Agreement Establishing The World Trade Organization.<sup>24</sup> One of the important things that is part of the international commitment is the obligation of WTO members to open market access for their member countries, both for trade in goods and services. Given that Indonesia has ratified the WTO Agreement, then Indonesia must comply with the principles regulated in the WTO including the GATS in it.<sup>25</sup> The GATS principles as set out in the GATS articles in Marrakech, Morocco in 1995, namely:

1. GATS covers all service sectors that are traded internationally;
2. Equal treatment for all members/most favored nation applies to all service sectors except for sectors that are still temporarily excluded;
3. The laws and regulations of all member countries must be transparent, which requires inquiry points in each country. Gats requires member countries to make all relevant laws and regulations open to all parties;
4. Rules must be objective and reasonable;
5. International payments are generally unlimited;
6. Individual country's commitment is made based on binding negotiations;
7. Progressive liberalization through further negotiations.<sup>26</sup>

With these principles in place, it means that Indonesia is already bound by an agreement on liberalization in the service trade sector. The liberal economic system based on individualism conflicts with the economic system adopted by the Indonesian nation, namely the Pancasila economic system which is based on kinship as stipulated in article 33 of the 1945 Constitution of Indonesia. One of the sectors included in trade in services is the health sector, and as part of the WTO, Indonesia must also implement liberalization in the health sector.

According to Article XIX of the General Agreement on Trade in Services concerning the Negotiation of Specific Commitments, WTO members are bound to take part in further rounds of negotiations in the services sector. All WTO members are signatories to the GATS and must assume the resulting obligations. The objectives of the GATS, as stated in the Preamble of Annex 1B General Agreement on Trade in Services, are as follows: "Wishing to establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting the economic growth of all trading partners and the development of developing countries."

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24 Intan Pelangi, "Analisis Konsekuensi Hukum Keanggotaan Indonesia Dalam Perjanjian World Trade Organization," *Keadilan Progresif* 8, No. 1 (2017):50.

25 Ni Luh Gede Hadriani, I Putu Gelgel, and I Putu Sastra Wibawa, "Environmental Conservation and Socio-Cultural Preservation Manifestations in Tourism Policy Development in Bali," *Journal of Environmental Management & Tourism* 12, no. 8 (2021): 71.

26 Abdul Aziz, Abdul Rashid, and Amy Chwee Ngoh Tan, "GATT, GATS and the Global Construction Industry" 5, no. 1 (1998): 31–37.

Further, Julia Nelson more clearly stated the purpose of the GATS as follows<sup>27</sup> “(a) to progressively liberalize trade in services utilizing continuous rounds of negotiations, this is aimed at introducing and distributing existing interests and achieving a balance of rights and obligations among all WTO members; (b) to encourage economic growth and development by liberalizing trade in services, as has also been done by the GATT (General Agreement on Tariffs and Trade) in the field of liberalization of trade in goods; (c) to increase the participation of developing countries in services trade and to spread services exports through export capacity building and export security opportunities in each sector of export interest.”

Comprehensive and sustainable development of the service sector is urgently needed to support one of the visions and missions of the 2020-2024 RPJMN, namely to create a competitive nation. The increase in trade in services cannot be separated from the role of trade agreements between countries. Free trade agreements remove various barriers to trade in services. The explanation regarding the modes of supply of the service sub-sectors traded is as follows:

1. Mode 1/Cross-Border Supply, this mode is intended for the availability of services from the territory of one country to another or known as cross-border;
2. Mode 2/Overseas Consumption, this mode refers to the physical movement of service consumers to the place where services are provided and consumed;
3. Mode 3/Commercial Presence, this mode is intended for the development of an affiliated company or also known as a subsidiary of a foreign service company where this mode will be related to foreign direct investment activities in the service sector, especially transportation;
4. Mode 4/Movement of Natural Persons, this mode refers to the temporary connection of providers to provide services to clients positioned in foreign markets.<sup>28</sup>

The committed health service sectors are divided based on the sectors that have been agreed upon in the GATS. The health services sector is committed by Indonesia and partner countries, in international services trade forums both bilaterally (IKCEPA, IECEPA, IACEPA, IJEPA, etc.), and regionally (AFAS, ATISA, AANZFTA, AKFTA, AJCEP, etc.). However, in the GATS itself, Indonesia has not yet committed to the health services sector.

Indonesia’s commitment to health services in various negotiations has great potential to be exploited. The Health sector, which is classified under the scope of trade in services (W/120), covers health services, which then consists of professional services such as medical and dental services, veterinary services, and services provided by midwives, nurses, physiotherapists, and para-medical personnel. In addition, there are also social services such as hospital services, other human health services, social services, and 7 others.

In the health services sector, the health services sub-sector included in the category is hospital services. Health professionals such as doctors, nurses, and pharmacists fall into the category of the business services sector. Nevertheless, these two things cannot be separated and the development of one of them will have an impact on other sectors. Furthermore, regarding the liberalization of the health services sector, it is stated that the commitment to market access in the health services subsector (professional services) with the largest FDI is in the ASEAN agreement (70%), followed by IACEPA (67%) and IKCEPA and RCEP (51%), while the Hospital services (CPC 9311) are committed to in all bilateral and regional agreement.

The healthcare sector is one of the fastest-growing service sectors in countries around the world. The health services sector is growing faster in the pandemic era with various research findings and technological support. In Chanda’s writings (2002) published by the United Nations World Health Organization (UN), namely the World Health Organization (WHO), it is stated that the globalization of the health service sector is shown through cross-border health services, either through the movement of health service providers or consumers. This movement is not limited to the movement of people, but also through various modes, one of which is through electronics. The implementation of trade in the health services sector has so far been carried out through collaborations with hospitals or health service providers, exchanges of experts or specialists, and medical tourism.

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27 Julia Nielson and Daria Taglioni, “A Quick Guide to the GATS and Mode 4” 1, no. 12 (2003): 22.

28 Rueda Cantuche José, “Trade in Services by GATS Modes of Supply: Statistical Concepts and First EU Estimates..” 2016, 7–8.



The rapid development of the health service sector is also marked by the increasing mobility of professional health workers from one country to another, either permanently or temporarily. Investment in health services in hospitals and health insurance services continues to be in demand. There is also a growing trend in world countries to establish international standard medical tourism. The classification of health sector service products is listed in MTN.GNS/W/120 dated 10 July 1991 concerning List of Service Sector Classifications. This classification is also known as the W120 service sector classification. This classification is the basis for classifying international trade commitments in the service sector which are widely used by WTO member countries as a reference. The service sector is classified into 12 (twelve) main sectors, which include health and social services.

International trade in health services includes human health services, other human health services, and social services. The definition of health services is services that are classified by the WTO as health services. Health services based on the WTO classification are divided into 4 (four) sub-sectors, namely: Hospital Services (Human Health Services), Medical and Dental Services (Human Health Services), Other Human Health Services, and Social Services (with accommodation and without accommodation).

As the application of international trade in health services in 4 (four) modes, the following examples can be observed. International trade in health services is conducted through 4 modes of supply, namely:<sup>29</sup>

- a. Mode 1/Cross-Border Supply: activities under this mode include the provision of health services, such as clinical diagnosis consultation by sending laboratory specimens, using the media of mail, telepathology, teleradiology, and telepsychiatry.
- b. Mode 2/Consumption Abroad: patients in developing countries will seek and select specialized hospital care that has the quality of modern and high-quality equipment available in developed countries, or in neighbouring countries with accredited standards of care that are superior to those in their country, and vice versa.
- c. Mode 3/Commercial Presence: the application of this mode is that Australian-owned hospitals can be established in Indonesia. Australia exports health services to Indonesia and Indonesia imports services from Australia. The situation will become more open and attractive for foreign investors to invest directly, as has happened in several countries including India, Nepal, Sri Lanka, and Thailand. For example, India has opened up its market access for foreign equity participation by 90%, so a German company can have a 90% stake to build a 200-bed hospital in Delhi. Several specialist hospital companies are being built with a collaboration between Indian and foreign companies, including a US\$40 million heart center, set up by a consortium from Australia, Canada, and India. For example, the Apolo hospital group from India has now built hospitals overseas and plans to invest about USD 4 billion for the construction of 15 new hospitals in countries including Malaysia, Nepal, and Sri Lanka.
- d. Mode 4/ Individual Movement: In the health sector, this can be illustrated by the movement of health workers from one country to another, including doctors, specialists, nurses, paramedics, midwives, technicians, consultants, trainers, health workforce management, and other professionals. The movement of health professionals, whether temporary or permanent, has different legal, social, and economic implications for countries of origin and receiving countries. The flow of individuals is mainly encouraged to earn foreign exchange and enhance intergovernmental cooperation. For example, China and Cuba send short-term contract health workers to countries in Africa.

### **3.3 The Idea of the Omnibus Law on Health as a National Legal Policy in Efforts to Improve Public Health Degrees in Indonesia**

Along with the changing times, the health service sector is not only handled by the government but for the sake of improving quality and increasing competitiveness in this service sector, it has begun to be carried out by the private sector. This can be seen from the many private hospitals that provide good facilities, equipment, and medical personnel and are not inferior to what is provided by the government. Even with a higher economic value, the private sector has been able to provide more adequate facilities and infrastructure.

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29 *Informasi Perundingan Perdagangan Jasa Sektor Jasa Distribusi* (Kementerian Perdagangan, 2021), 14.

Related to improving the quality of health services and the economic potential that can contribute to economic growth in Indonesia, is by conducting international trade in health services.

International trade in health services is one sector of trade in services that are experiencing growth in many countries. This growth is marked by the large number of health professionals migrating to other countries, usually for reasons of wanting higher incomes and better working conditions. This growth was also marked by a significant increase in investment by foreign hospital service providers and health insurance companies to seek new market access. In addition, it is also seen that more and more countries want to attract consumers in the health sector from other countries through the combination of tourism and health services (medical tourism). International trade in health services includes semi, medium, and high-value-added services which include not only modern health services but also traditional medicine.

The idea of an omnibus law on health as a national legal policy in an effort to improve public health status in Indonesia has recently been hotly discussed among the government and the health profession. Rejection regarding efforts to implement the Health Omnibus Law in Indonesia came from various health professionals. When referring to Indonesia which is a member of the WTO and GATS, Indonesia must prepare itself from an early age both in regulation based on the commitments agreed in the agreement and readiness to compete fairly against fellow member countries, especially in the health sector.

It is important to revise health regulations in Indonesia in the form of an omnibus law to simplify policies and regulations in the health sector. This is a challenge and at the same time an opportunity in the future for health investment in Indonesia. Such as the concept of medical tourism which will soon operate in Bali, namely an international scale hospital in collaboration with the Mayo Clinic from America. Hence, the urgency to improve health regulations in Indonesia is very urgent to be done immediately.

Several regulations have the potential to cause disharmony and hinder the implementation of health service sector commitments as regulated by the GATS, for example There are different arrangements in the formulation of the definitions of doctors and dentists between Article 1 point 2 of the Medical Practice Law and Article 1 point 9 and point 10 of the Law on Medical Education. Article 1 point 2 of the Medical Practice Law only states that doctors and dentists are doctors, specialists, dentists, and dental specialists who have graduated from medical or dental education both at home and abroad who are recognized by the Government. Meanwhile, the provisions in Article 1 point 9 and point 10 of the Medical Education Law state that Primary Service Doctors and specialist doctors with subspecialty medical education graduates, a selected specialist doctor who comes from both domestic and foreign medical education graduates who have been accredited and recognized by the government. Similarly, a selected dentist is a specialist dentist who comes from both domestic and foreign dental education graduates who have been accredited and recognized by the government. Furthermore, the formulation of Article 1 point 12 of the Medical Practice Law which mentions the name of a professional organization has created differences in understanding of its implementation, this can be seen in the inconsistency in the use of the phrases medical professional organization and dentistry professional organization in Article 14 paragraph (1) and 28 paragraph (2). Medical Practice Act. The inclusion of the name of a professional organization in the definition of a professional organization regulated in Article 1 paragraph 12 of the Medical Practice Law is also different from that regulated in Article 1 paragraph 20 of the Medical Education Law which does not include the name of a professional organization in the provisions of Article. These problems lead to legal uncertainty and differences in understanding in terms of implementation for stakeholders. There is an inconsistency in the use of the phrases of guidance and supervision and differences in arrangements regarding the authorities in conducting guidance and supervision in the formulation of Article 7 paragraph (1) letter c jo. Article 54 paragraph (1) and paragraph (2) jo. Article 71 of the Medical Practice Law. Article 7 paragraph (1) letter c of the Medical Practice Law only uses the phrase coaching for the assignment of KKI authority and Article 54 paragraph (1) and paragraph (2) of the Medical Practice Law uses the phrase coaching and only involves KKI and Professional Organizations while Article 71 uses the phrase coaching and supervision and involve the Central Government, Local Government, KKI and OP. This has led to different understandings and ineffective implementation of guidance and supervision of medical practice. Then the Medical Practice Law was submitted for review repeatedly by the public and the Constitutional Court granted 3 (three) cases of the proposed review, namely through Decision Number 4/PUU-V/2007, Decision Number 40/PUU-X/2012, and Decision Number 10/PUUXV/2017. The provisions of the Articles and/or paragraphs in

the Medical Practice Law that have been amended based on the three Constitutional Court Decisions are Article 14 paragraph (1) letter a, Article 14 paragraph (2), Article 73 paragraph (2), Article 75 paragraph (1), Article 76, Article 78, and Article 79 letter c of the Medical Practice Law. The implications that arise from the duties of the Constitutional Court decision are: eliminating imprisonment, eliminating imprisonment, eliminating sanctions for the obligation to increase knowledge and keep abreast of scientific developments, exclusion of dental artisan profession Prohibition of IDI management from sitting on KKI membership. So far, the legislators have not followed up by amending the articles/paragraphs of the Medical Practice Law after the Constitutional Court's decision. Therefore, to ensure legal certainty in Indonesia and to respect the national judiciary, in this case, the Constitutional Court, legislators must immediately amend the article or paragraph that has changed based on the Constitutional Court Decision.

Likewise with regard to technological developments in all aspects of life, especially when the spread of the Covid-19 pandemic, resulted in a transformation in the implementation of health services, especially in medical services which led to the emergence of health services and health technology which so far did not exist. Some examples of medical technology currently being developed are: Virtual Reality and Augmented Reality Robot Artificial Intelligence Health Monitoring Tech Artificial organs or body parts. Besides that, the implementation of medical practice is not only intended for doctors and dentists with domestic graduates, but also foreign graduates through evaluation. Article 30 paragraph (2) of the Medical Practice Law regulates the evaluation of doctors and dentists who graduated from abroad who wish to practice in Indonesia. Implementation has not gone well, this is because coordination between stakeholders has not run as it should. Coordination between stakeholders is very important so that doctors and dentists who graduated from abroad can be done as soon as possible considering this is related to the human rights of doctors and dentists to get jobs and income.

Based on the above mentioned, it can be observed that some so many policies and regulations are not harmonious in the health sector in Indonesia. So, it is necessary if the concept of regulations and policies that guarantee relations between nations by prioritizing national interests and the importance of policies and laws and regulations that uphold universal human rights while still remembering national wisdom and maintaining equal, just, and civilized relations between nations.

#### 4. CONCLUSION

Based on the description of the discussion above, it can be concluded that the ontological aspect of health promotion and prevention to improve the degree of public health is one of the important elements in improving welfare which can be done utilizing plenary health development, optimizing social responsibility, optimizing community loading power and empowering individual and community personnel and securing and guaranteeing the availability of good health infrastructure. And, health in the GATS sector is the result of a service trade commitment that has great potential to be utilized because it has the fastest growing services in various countries in the world which are characterized by increased mobility of health professionals from one country to another to collaborate. As well as, the idea of health omnibus law as a national legal policy to improve the degree of public health in Indonesia, namely by conducting international trade in health services. Therefore, it is necessary to revise and harmonize regulations nationally but still based on the values of Pancasila to ensure the realization of the mission of improving the degree of public health in a comprehensive, fair, affordable, and legal certainty.

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