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Deconstructing Fiscal Commitment Post-Law No. 17 of 2023: An Analysis of the Non-Regression Principle and the Impact of Decentralized Discretion on Maternal and Child Health Equity in Indonesia

Yudhi Hertanto Akahira

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: yudhihertanto@gmail.com

Abstract. *The enactment of Law Number 17 of 2023 concerning Health marks a radical paradigm shift in the legal politics of health financing in Indonesia. This policy abolished the mandatory health spending scheme, which was previously locked at a minimum of 5% of the State Revenue and Expenditure Budget (APBN) and at least 10% of the Regional Revenue and Expenditure Budget (APBD), excluding employee salaries. The government posits that this abolition aims to enhance the efficiency and flexibility of regional budgets through a performance-based budgeting approach. However, removing the floor limit of the national health budget risks triggering a retrogression in regional fiscal commitments (fiscal regression), particularly regarding gender- and child-responsive long-term preventive and promotive programs, such as malnutrition management, stunting prevention, and safe delivery guarantees. Under regional autonomy, these long-term social programs are vulnerable to being sacrificed for physical infrastructure development allocations, which possess instant electoral appeal. This study aims to deconstruct the juridical-philosophical implications of this financing scheme transition on equity in maternal and child health (MCH) services. Specifically, it examines whether the abolition of guaranteed mandatory health spending violates the Principle of Non-Regression in international human rights law and analyzes how regional autonomy affects the stability of health budgeting for vulnerable groups. This socio-legal research employs an interdisciplinary approach that combines normative-dogmatic analysis, philosophical reconstruction, and a rights-based policy critique. A systematic qualitative analysis was conducted on regulatory documents, landmark Constitutional Court decisions, regional budget realization data, and budget governance monitoring reports from national supervisory institutions. The study finds that the abolition of mandatory health spending de jure satisfies the criteria for*

retrogressive measures or normative retrogression, which contradicts the progressive realization obligation under the International Covenant on Economic, Social and Cultural Rights (ICESCR). Furthermore, disparities in regional fiscal capacity give rise to a "geographical lottery" phenomenon, wherein child survival and the protection of women's reproductive health heavily depend on local local-source revenue capacities. Additionally, the operation of the Political Budget Cycle ahead of Regional Head Elections (Pilkada) systematically drives the diversion of basic health budgets toward short-term populist programs to benefit incumbent electorates. To mitigate the risk of empirical retrogression, this study recommends regulatory reconstruction by establishing a protected, ring-fenced Vulnerable Groups Health Fund within the APBD with a rigid fiscal floor linked strictly to the fulfillment of subnational minimum health service standards (SPM) and backed by central fiscal transfer deduction sanctions.

Keywords: *Health Law of 2023; Mandatory Spending; Maternal and Child Health; Principle of Non-Regression; Regional Autonomy.*

1. Introduction

The national health system in Indonesia stands at a crucial crossroads following the enactment of Law Number 17 of 2023 concerning Health (UU Kes 17/2023). This regulation was drafted utilizing the omnibus law legislative method to consolidate, simplify, and revoke dozens of health sector laws deemed to overlap and impede bureaucratic efficiency and medical investment (Muhafid et al., 2025). Beneath the government's ambition to accelerate the transformation of the national health system, the specific policy that has triggered sharp theoretical, sociological, and juridical clashes is the abolition of mandatory health spending provisions. Previously, Law Number 36 of 2009 concerning Health established an anchor for the state's budgetary commitment, mandating a health expenditure allocation of at least 5% of the State Revenue and Expenditure Budget (APBN) and a minimum of 10% of the Regional Revenue and Expenditure Budget (APBD), excluding employee salaries (Putra, 2024).

The government argues that the transition from a conventional mandatory spending scheme to a performance-based budgeting paradigm aims to rectify allocative inefficiencies at the regional level (Swasono, 2023). Based on evaluations by the Ministry of Finance and the Ministry of Health, the obligation to fulfill rigid budget percentages frequently incentivized regional governments to merely spend budgets to meet statutory administrative targets (Ditjen Anggaran Kemenkeu, 2023). A frequently highlighted subnational budgeting anomaly is

the forced absorption of stunting program budgets for cosmetic physical projects, such as renovating Community Health Centers (Puskesmas), which bear no direct correlation with improving child malnutrition (Muhawarman, 2024). Within the logic of bureaucratic efficiency, eliminating the floor limit is expected to drive the application of the "money follows program" principle, aligned with the Health Sector Master Plan (RIBK) as an instrument for central-regional budget planning synchronization (Kemenkes RI, 2024).

However, this efficiency-based argumentation is fiercely debated by academics, medical professional organizations, and humanitarian activists (Siahaan, 2023). Social health sector expenditures that are nutrition- and child-responsive—such as malnutrition management, programs to reduce stunting prevalence, the provision of complete basic immunization, and the fulfillment of Maternal and Child Health (MCH) Minimum Service Standards (SPM)—constitute long-term preventive-promotive programs (Taufiqi, 2024). Such humanitarian programs require stable, protected, and sustainable macro-budgetary certainty from year to year (Putra, 2024). Eliminating the floor limit guarantee of the national health budget effectively shifts the entire responsibility for ensuring financing to the subnational level, where regional fund allocations are now heavily determined by the dynamics of APBD formulation by the Regional Head and the Regional House of Representatives (DPRD), pursuant to regional autonomy provisions under Law Number 23 of 2014 concerning Regional Government.

A profound research gap persists between the government's managerial-economic logic emphasizing budget efficiency and the human rights mandate demanding the highest attainable standard of health (Yamin et al., 2025). Budgetary commitments uncoupled from national statutory controls have the potential to trigger extreme volatility in regional budgeting (Sofi, 2022). Although at a macro-aggregate level, the government reported that the 2025 health budget allocation remained maintained at approximately 6% of the APBN, equivalent to Rp217.3 trillion (Muhawarman, 2024), temporary political commitments cannot guarantee long-term budgeting stability for underdeveloped regions with low fiscal capacity (Swasono, 2023). Therefore, this study aims to bridge this academic gap by critically analyzing the implications of abolishing subnational mandatory health spending on the fulfillment of the right to health for vulnerable groups through the lens of international human rights law and local budget politics in Indonesia.

Theoretical Framework: Certainty, the Non-Regression Principle, and Progressive Boundaries

Hans Kelsen’s Hierarchical Legal Certainty Theory

In assessing the constitutionality of relinquishing mandatory financing commitments in the health sector, the theory of the hierarchy of legal norms (*Stufenbaulehre*) declared by Hans Kelsen provides a foundation regarding the vital importance of legal certainty (Kelsen, 1967). It is asserted that the legal order is a hierarchical structure of norms where a lower norm derives its validity from a higher norm and must not contradict the norm above it (Indrati, 2015).

Within the context of a welfare state, national statutory law functions as a constitutional shield that locks in the minimum protection boundaries of citizens' social rights (Rawls, 1971). The budget floor limit regulated under national law constitutes a form of hierarchical legal certainty ensuring that the fulfillment of the people's basic right to health cannot be unilaterally degraded or renegotiated by local authorities (Siahaan, 2023). When this budget floor guarantee is expunged from national law, this hierarchical chain of certainty is broken, triggering legal vulnerability wherein the health status of citizens is subjected to the uncertainty of annual regional political compromises (Putra, 2024).

The Principle of Non-Regression in International Law

The principle of legal certainty operates in tandem with The Principle of Non-Regression (or the non-retrogression principle), which is recognized as a fundamental norm of international human rights law (Yamin, 2023). Under Article 2 paragraph (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Indonesia via Law Number 11 of 2005, states bear an obligation to achieve progressively the full realization of economic, social, and cultural rights (progressive realization) utilizing their maximum available resources (Yamin et al., 2025). The logical converse of the obligation for progressive realization is the strict prohibition against states taking retrogressive measures that deliberately reduce or lower the level of human rights protection previously achieved.

The UN Committee on Economic, Social and Cultural Rights (CESCR) through General Comment No. 14 specifically underscores that health sector financing is a legally enforceable component protected by the principle of non-retrogression. International doctrine conceptualizes the degree of violation of the non-regression principle into four models (Yamin et al., 2025):

1. Component Model: Positions non-retrogression not as an independent doctrine, but as part of the assessment of whether a state has violated its overall obligation of progressive realization.

2. Corollary Model: Views the non-retrogression principle as the direct opposite of the progressive obligation, where any retrogression in social policy is regarded as a *prima facie* legal violation.

3. Composite Model: Structuring the non-retrogression doctrine from a combination of minimum core obligations and the non-discrimination principle.

4. Un-Coupled Model: Conceptualizes non-retrogression as an independent obligation that stands alone outside the textual structure of the convention, prohibiting the revocation of formal legal guarantees (normative retrogression) as well as the decline of service quality in the field (empirical retrogression).

The policy of relinquishing mandatory health spending in UU Kes 17/2023 satisfies the criteria for a normative retrogressive measure because revoking the *de jure* fiscal legal protection shield risks generating a *de facto* empirical retrogression in healthcare service quality for the poor (Putra, 2024).

Progressive Law Theory vs. Political Opportunism

In regional autonomy discourse, the Progressive Law Theory championed by Satjipto Rahardjo serves as an analytical tool. Progressive law rejects rigid, dogmatic legal positivism and asserts that "law is for man, not man for the law" (Rahardjo, 2006). Consistent with this progressive perspective, relaxing rigid administrative regulations such as mandatory budget thresholds is seen as a progressive step to liberate regional bureaucrats to conduct contextual innovations and discretionary budgeting tailored to the real needs of local communities.

However, this idealistic assumption clashes diametrically with rational choice theory and the reality of Political Opportunism at the regional level (Boll & Sidki, 2021). Absent coercive floor limit instruments, the discretionary space of regional heads is highly prone to exploitation by local political actors (Sinaga, 2025). As rational actors prioritizing power retention, regional heads tend to divert budgets from long-term basic service sectors (MCH and nutrition improvement) to monument physical projects or instant social assistance spending to secure voter bases ahead of regional head elections (Sjahrir et al., 2013). The paradox between the illusion of progressive discretion and the reality of political opportunism positions vulnerable groups, particularly pregnant women and children, as the primary casualties of weakened national fiscal protections (Siahaan, 2023).

2. Research Methods

This study is designed as socio-legal research utilizing an interdisciplinary approach. The socio-legal method was selected because this study does not merely examine health regulatory texts dogmatically, but also investigates the operation of law within the realities of political economy and regional financial governance (Marzuki, 2005). The research approaches deployed include the statute approach, conceptual approach, philosophical approach, and a rights-based policy critique (Yamin et al., 2025).

Primary legal materials were compiled from the 1945 Constitution of the Republic of Indonesia, the International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified via Law Number 11 of 2005, Law Number 17 of 2023 concerning Health, Law Number 23 of 2014 concerning Regional Government, and relevant Constitutional Court jurisprudential decisions (Putra, 2024). Secondary legal materials were sourced from state financial law textbooks, reputable scientific journals on law and development economics, and official reports from credible institutions such as the Directorate General of Fiscal Balance (DJPK) of the Ministry of Finance, the Corruption Eradication Commission (KPK), and the Audit Board of Indonesia (BPK) (DJPK, 2023; KPK, 2023).

Data analysis was conducted using a systematic qualitative interpretation method paired with legal hermeneutics and philosophical reconstruction techniques (Yamin, 2023). Through a critical qualitative socio-legal approach, the study comprehensively maps how regional autonomy and the elimination of health financing guarantees affect the reallocation of subnational health budgets during crucial periods of local political contestation and the implementation of national priority programs (Sinaga, 2025).

3. Results and Discussion

3.1. Constitutional Retrogradation: Deconstructing the Statutory Floor Limit

The policy of abolishing mandatory health spending in UU Kes 17/2023 is a manifest demonstration of constitutional retrogradation (Siahaan, 2023). The Indonesian Constitution, via Article 28H paragraph (1) of the 1945 Constitution, explicitly affirms that everyone has the right to live in physical and spiritual prosperity, to have a good and healthy living environment, and to enjoy health services. Furthermore, Article 34 paragraph (3) of the 1945 Constitution imposes a constitutional responsibility upon the state to provide decent health service facilities (Lisa et al., 2026). State obligations are binding and non-derogable within the context of fulfilling minimum protection levels for citizens' lives (Yamin, 2023). Erasing mandatory

budget percentages from national statutory law effectively dismantles the constitutional shield that guarantees access to basic healthcare for all people.

Efforts to defend these constitutional rights are reflected in the history of judicial review petitions in the Constitutional Court. In the formal review stage, the Constitutional Court, through Decision Number 130/PUU-XXI/2023, rejected the petition to invalidate UU Kes 17/2023 filed by a coalition of medical professional organizations, ruling that the legislative process had conformed to the formal tenets of national legislation drafting (Hanif, 2025). However, substantive legal resistance persisted through the registration of a material review in Case Number 182/PUU-XXII/2024 (Mahkamah Konstitusi, 2026). The petitioners argued that the enforcement of the omnibus law degraded public healthcare into a capitalistic, market-driven health industry and eliminated health financing protections for the poor by revoking mandatory spending (Mahkamah Konstitusi, 2025).

The dynamics within the constitutional court demonstrate highly progressive developments. In late January 2026, the Constitutional Court rendered its Decision in Case Number 182/PUU-XXII/2024, marking a historic milestone (Mahkamah Konstitusi, 2026). Although the Court did not invalidate the abolition of mandatory spending entirely, it provided essential deliberations regarding the state's obligation to refrain from taking retrogressive steps in the citizens' social security net.

The Court's resolute measures continued in early February 2026 with the partial granting of a material review concerning the independence of medical professional collegiums. This decision explicitly rejected efforts toward bureaucratic unification and absolute government control over the autonomy of medical scientific institutions, restoring the position of collegiums as independent guardians of medical competence quality (Katyana, 2026). This proves that relinquishing state responsibility under the banner of bureaucratic flexibility constitutes a normative retrogressive measure that betrays the ideals of a welfare state (Putra, 2024).

The retrogression of legal protection has materialized in an empirical crisis regarding health social security for the poor. Following the implementation of the new rules, a phenomenon of mass deactivation of Premium Assistance Beneficiary (PBI) BPJS Kesehatan memberships for impoverished citizens occurred across various regencies and cities (Lisa et al., 2026). Regional governments unilaterally deactivated these insurance cards under the pretext of regional budget efficiency and poverty data alignment, failing to provide adequate transition procedures for affected citizens.

From a health law perspective, the unilateral deactivation of health insurance access for impoverished citizens constitutes a serious violation of human rights (Lisa et al., 2026). From an equity dimension, the loss of medical protection cards for high-risk pregnant women from underprivileged backgrounds represents structural violence that directly threatens maternal and fetal safety, reducing the essence of health from a constitutional right to a market commodity vulnerable to neglect (Rahman, 2025).

3.2. The Illusion of Progressive Discretion: APBD Volatility and the Geographical Lottery Phenomenon

Entrusting healthcare to subnational decentralized budgeting ignores the stark reality of regional fiscal capacity disparities in Indonesia (Ditjen Anggaran Kemenkeu, 2023). The average ratio of local-source revenue (PAD) for regencies and cities hovers at an extremely low range of only 10.75% (Sinaga, 2025). This figure confirms an extreme financial dependence on central government transfer funds, such as the General Allocation Fund (DAU) and the Special Allocation Fund (DAK) (DJPK, 2023). When the 10% APBD mandatory spending shield is excised from national law, regions with weak fiscal capacity immediately slash basic health service budgets to secure mandatory personnel expenses and regional government bureaucratic operations (Siahaan, 2023).

The sociological fallout of this vanished national fiscal guarantee is the emergence of a "Geographical Lottery" phenomenon regarding child survival (Swasono, 2023). Under the shadow of regional autonomy lacking a budget floor, a child's right to life, growth, and development is no longer universally guaranteed by the state, but is instead dictated by the geographical luck of where they are born. A child born in an affluent urban area with abundant PAD, such as DKI Jakarta or Surabaya, enjoys free healthcare facilities, rigorous nutritional monitoring, and complete immunizations (DJPK, 2023). Conversely, a child born in a remote interior region with minimal fiscal capacity faces a fate of downsized Puskesmas operations, basic drug shortages, and high stunting prevalence due to local funding constraints (Putra, 2024).

The KPK's findings dismantle the illusion of progressive discretion promised by the regulatory overhaul (Ditjen Anggaran Kemenkeu, 2023). At the regional level, budget tagging for stunting and MCH interventions is frequently manipulated administratively to produce cosmetic reports for the central government (KPK, 2023). In reality, nearly 78% of the budget claimed for stunting was utilized to finance coordination meetings, bureaucratic travel, ceremonial dissemination events, and administrative expenditures that do not directly benefit the targeted recipients.

The empirical data in Table 3 demonstrates that the volume of regional expenditure does not automatically correlate with public health outcomes (Kemenkes RI, 2024). An extreme case occurred in Papua Province (DJPK, 2023). Even though aggregate stunting expenditure in Papua reached Rp2.51 trillion, the stunting prevalence rate in this region experienced a drastic surge of 5.10%, climbing from 29.5% in 2021 to 34.6% in 2022.

The systemic failure in Papua is driven by low regional budget oversight capacity, severe geographical challenges, extreme dependence on central transfers, and dysfunctional medical targeting (World Bank, 2025). Devoid of statutory floor guarantees and stringent oversight, loosening national fiscal controls will merely replicate similar budget leakages across remote regions (Putra, 2024).

3.3. Politicization of Health: The Political Budget Cycle and National Fiscal Pressures

The vulnerability of maternal and child health financing is further exacerbated by the dynamics of the Political Budget Cycle (PBC) at the subnational level (Andi et al., 2025). Empirical studies across developing democracies indicate that ahead of direct election years, incumbent regional heads exhibit opportunistic tendencies to manipulate APBD allocations to secure electoral victories (Boll & Sidki, 2021). In Indonesia, PBC dynamics have intensified since the inception of direct regional head elections in 2005 (Sjahrir et al., 2013).

The cost of local political contestation in Indonesia is exceptionally high (Dharayanti et al., 2024). A study by the Ministry of Home Affairs' Research and Development division noted that regent/mayor candidates must spend a minimum of Rp20 to Rp30 billion, while gubernatorial candidates must expend between Rp20 and Rp100 billion to secure party nominations and run campaigns (Dharayanti et al., 2024). This massive financial pressure drives incumbents to exploit APBD instruments as electoral political engines. The pattern of subnational budget manipulation typically manifests in two systematic distortion tactics (Sinaga, 2025):

a. Slashing Long-Term Social Expenditure: Basic preventive health programs that are less visible to voters, such as Puskesmas facility maintenance, posyandu worker operations, early marriage prevention, and essential medicine procurement for vulnerable groups, are heavily cut for budget efficiency (Wiguna & Khoirunurrofik, 2021).

b. Escalating Short-Term Populist Expenditure: Regional budgets are heavily diverted to fund highly visible expenditures that voters experience instantly, such as surges in social assistance (bansos) spending, grants to supporting civil organizations, and small-scale village road projects right before polling day (Rizqiyati & Setiawan, 2021).

The symptoms of PBC cause short-term budget deficits that strain regional fiscal sustainability once the election concludes (Rizqiyati & Setiawan, 2021). In 2026, pressure on basic budget allocations experienced extraordinary escalation at the national level (Susanti, 2026). Following the abolition of mandatory health spending provisions, the emergence of a massive new national priority program, namely the Free Nutritious Meal Program (MBG), triggered fresh constitutional debates regarding the state's fiscal space (Yudha, 2026).

In an expert testimony delivered during a Constitutional Court plenary session in late April 2026, Bivitri Susanti issued a stern warning that implementing the Free Nutritious Meal Program carries an immense risk of burdening the mandatory education budget, which is constitutionally locked at 20% (Susanti, 2026). The MBG program, which integrates children's rights to food and health, requires immense financial backing (Yudha, 2026).

When even explicitly guaranteed constitutional sectors like education begin to be distorted by populist programs, subnational health financing, which has lost its statutory minimum percentage guarantee, becomes the most vulnerable target for severe budget cuts (Siahaan, 2023). Regional governments are forced to sacrifice Puskesmas operational budgets to cover their contribution shares for this new central program (Putra, 2024). The convergence of local electoral political pressures and national populist programs creates a double retrogression risk for maternal and child health protection in Indonesia (Yamin, 2023).

4. Conclusion

The abolition of mandatory health spending fiscal guarantees (minimum 5% of the APBN and at least 10% of the APBD) via Law Number 17 of 2023 concerning Health constitutes a form of legal retrogression (normative retrogradation) that directly violates the Principle of Non-Regression within international human rights law framework (Yamin et al., 2025). This policy dismantles the hierarchical legal certainty protected by national law and reallocates the fulfillment of the constitutional right to health into unstable local political discretionary spaces fraught with short-term electoral interests (Putra, 2024). The empirical implications of relinquishing this statutory fiscal commitment have catalyzed a discriminatory "Geographical Lottery" phenomenon, where child development and women's reproductive health are no longer universally guaranteed, but depend entirely on regional revenue capacities (Swasono, 2023). Amidst local bureaucratic capacity constraints and deficient budget accountability, the removal of the budget floor risks fostering massive allocative dysfunctions, wherein health funds for vulnerable groups are opportunistically slashed during Pilkada Political Budget Cycles to feed instant populist programs (Andi et al., 2025).

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