



## Accepting the Rights of Patients in Hospital Health Services

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### **Abstract**

This writing is one of the forms of human rights violations and compliance in the treatment of patients in hospitals. We recognize that the patient, as the weaker party in obtaining hospital services, will usually accept what the hospital does, including in the case of his servants, even if his services are not in accordance with the prescribed procedures. This study and writing is to find out and explain how the policy of the health insurance enforcement against the hospital that practices fraud in fulfilling the rights of the patient as well as setting the duration of attendance for the participants and the mechanism of the system of payment of health insurance to the hospital in the cooperation agreement (PKS). This study and writing use a normative and empirical approach by placing the laws relating to substances as the center of the study and descriptive methods intended to display all the data related to the substance. The data used are library data such as legal instruments, books, the Internet, and so on, as well as observations and interviews with relevant parties where the data is collected by performing descriptive analysis for results that show that there is a violation of the rights of health insurers in providing hospital facility services in connection with the limitation of treatment time by hospitals.

**Keywords:** *The Rights of Patients; Health Service*

### **Introduction**

Health is a very important aspect in human life, and is also one of the determining aspects of the success of national development.<sup>1</sup> Health development is, in principle, aimed at increasing awareness, will, and ability to live a healthy life for everyone. This is done in order to realize an optimal degree of health as one of the elements of general well-being as referred to in the opening of the Constitution of the Republic of Indonesia of 1945 (UUD 1945). Health, as one of the forms of human rights, must be realized in the form of the provision of various health efforts to the whole of society through the maintenance of quality and affordable health development by the community. These provisions are governed by articles 2 and 3 of the Health Act No. 36 of 2009.<sup>2</sup> The continuous development of health encourages the

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<sup>1</sup> Azika Zena Amelia, Suhaimi, Pelaksanaan Pengawasan Organisasi Profesi Apoteker Terhadap Pelaksanaan Tugas Apoteker di Kota Banda Aceh, *Jurnal Ilmiah Mahasiswa Bidang Hukum Kenegaraan*, Vol. 2(2) Mei 2018, pp.444-452.

<sup>2</sup> Health Act No. 36 of 2009

government to endeavor to provide legal certainty, legal protection, and social well-being for all the people by providing social protection guarantees in accordance with the provisions of Article 28H paragraphs (1), (2), and (3) and Article 34 paragraphs (1) and (2) of the UUD 1945. In addition, People's Assembly Decree No. X/MPR/ 2001 empowers the President to establish a national social security system to ensure social protection and build a more comprehensive and integrated society.<sup>3</sup> In order to achieve the goals of national social security, it is necessary to establish the organizational structure of a public legal person in accordance with the principles of reduction, openness, non profit, prudence, accountability, portability, mandatory participation and trust funds. The management results of the social Security Fund are used exclusively for the development of the plan and are in the best interests of the participants. Therefore, the Indonesian government established the national social security system through the National Social Security System Law No. 40 of 2004 (hereinafter referred to as Undang-Undang SJSN 2004). The government has designated the Social Security Organizer Agency (hereinafter referred to as BPJS) as a national health insurance program based on the principles of social insurance and equity with the aim of ensuring that participants receive health benefits under Act No. 24 of 2011 on the Social Insurance Organizer Authority (herein referred to as the BPJS 2011 Act) in force on January 1, 2014.<sup>4</sup>

Such an existence of BPJS is proof that the government and its related stakeholders have a great commitment to achieving social well-being for all its people. In order to improve the level of public health, several hospitals that have cooperated with BPJS through cooperation agreements (PKS) are expected to be willing to serve BPJS patients in accordance with the provisions of the SJSN Act 2004. But as far as the field surveillance in the hospital is concerned, the implementation of the BPJS has not been performed optimally. Hospitals that practice fraud have set treatment time limits for BPJS of Health participants. With no agreement, each participant in the BPJS of Health/patient hospital facility ceases to receive treatment when the day of care has reached three (3) days without considering the condition of the patient himself<sup>5</sup>. This is in violation of Article 52, Letter C, of Act No. 29 of 2004 on Medical Practice (hereinafter referred to as UUPK 2004), namely the right of patients to receive services according to their medical needs.

As the above phenomenon indirectly illustrates, the implementation of the cooperation agreement between the BPJS and the hospital is not fully running optimally. Such conditions clearly create a clash between the establishment of hospitals and the fulfillment of patients' rights and also the Government of Indonesia is committed to guaranteeing every citizen's right to health during disaster. Every citizen must be guaranteed the fulfillment of the right to their health. The Constitution clearly and unequivocally mandates the Government to fulfill these health rights. The right to health includes the right to food, clothing, shelter and to health services. In addition, if a person's condition regresses due to certain situations that result in him being constrained to productively live his life, then the right to continue a prosperous and safe life becomes an important part that must be fulfilled. The state must be present in this situation, so that what is fulfilled is not only his personal health, but his health socially.

## Research Methods

This study adopts a normative legal approach. Research methods used in normative legal research are supported by field data, particularly those that focus on law being identified as regulatory or legal norms and having substantive and formal legal sources, and are supported by library data as in normative legal research methods. Supporting factors. Legal theories such as laws, government regulations, and

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<sup>3</sup> Fitra Aryadi, Legal Protection Against BPJS Health Participants in Obtaining Health Services at RSUD Ade Muhammad Djoen Sintang", *Jurnal of Law*, Volume 4, No. 4, 2015.

<sup>4</sup> Sundoyo, *Jurnal Hukum Kesehatan, Biro Hukum dan Organisasi, Setjen Departemen Kesehatan RI*, Jakarta, 2009.

<sup>5</sup> Endang Kusuma Astuti, "Peran BPJS Kesehatan Dalam Mewujudkan Hak Atas Pelayanan Kesehatan Bagi Warga Negara Indonesia", *Jurnal Penelitian Hukum Indonesia*, Volume 01, No 01 Tahun 2020.

evidence provided through articles or legal norms. In other words, the methods of normative legal research are supported by library data and therefore include conceptual methods, legal methods and sociological methods of law. To ensure the integrity of the data, interviews were also conducted with several informants relevant to this study.

## **Result and Discussion**

### **1. Protection of the Law of the Participant in BPJS of Health in Obtaining Health Services in the Hospital**

Everyone is entitled and obliged to receive the optimal degree of health. That's why a higher degree of health must be continuously sought to satisfy a healthy life. Article 28H of UUD 1945, the second amendment, states that "everyone has the right to a life of inherent well-being, as well as access to health services." As the greatest means of health services, the hospital is an institution of health care that organizes individual health services fully, which provides hospital care, street care, and emergency care. It is organized on the basis of Pancasila and is based on the values of ethics, humanity, and professionalism, justice, benefits, equality of rights and anti-discrimination, governance, safety and protection of patients, and has a social function." Therefore, their rights must be considered and fulfilled.<sup>6</sup>

The social protection organized by the state in guaranteeing its citizens comply with health insurance has basically been explicitly regulated in Article 25, Paragraph 1, of the 1948 United Nations Declaration on Human Rights and the 2005 World Health Assembly (WHA) resolution. The statement said that countries should develop universal health coverage (UHC) systems through social medical insurance mechanisms to ensure sustainable health financing. Further the application of this social security must be governed by Section 28H (3) and Section 34 (2) of UUD 1945. Section 28H (3) of UUD 1945 provides that everyone is entitled to social security to enable him to fully develop into a worthy human being. In order to provide social security to every citizen the government considers it necessary to establish a universal social security system as mandated by Section 34(2) of the UUD 1945. Article 34(2) of the UUD 1945 provides that the State shall establish a system of social security for the entire population in accordance with human dignity and shall strengthen the weak and disabled communities.

This is done as an attempt to achieve the highest level of public health, as is the goal of health development. Thus, for legal protection related to the participants of BPJS Health in obtaining health services, the government issued Law No. 24 Year 2011, which establishes two BUMN, namely PT Askes and PT Jamsostek, and changed the form into a public service body to implement five programs mandated by Law SJSN 2004: the health assurance program for BPJS of Health and other programs submitted to BPJS Employment. The government, through the Minister of Health, has established a number of regulations governing the implementation of the BPJS health program, both in terms of rates and procedures for obtaining health services. All Indonesians are obliged to participate in the BPJS-managed health insurance, including foreigners who have worked for the shortest six months in Indonesia and have paid premiums. With this implementation, it is expected that there will be no more Indonesian people, especially poor people who do not have medical facilities when they are sick because they have no cost.

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<sup>6</sup> Mustafa, Suhaimi, Darmawan, Effort to Fulfill Female Convicts' Rights to Health and Clothing at Sigli Class IIB Correctional Facility for Women, *Jurnal Penelitian Hukum De Jure*, Volume 21 Number 2, 2 Juni 2021, pp. 237-242.

## 2. Health Insurance Policy (BPJS) Against Hospitals Practicing Fraud (Fraud) against BPJS Health Participants

Hospitals are institutions of health care that provide full-fledged individual health care, providing nursing care, street care, and emergency services. It is organized on the basis of Pancasila and is based on the values of ethics, humanity, and professionalism, justice, benefits, equality of rights and anti-discrimination, governance, safety and protection of patients, and has a social function. One name is the process of treatment of a patient by a health professional for a particular illness, in which a patient is placed in a room in a hospital that includes individual health care that includes observation, diagnosis, treatment, nursing, and medical rehabilitation. Hospitals that cooperate with BPJS Health should not set time limits for treatment and then return patients to hospitals before they are eligible to return home and without considering the humanitarian and safety aspects of patients. If the hospital does that, then they could be considered a fraud against the Cooperation Agreement (PKS). Healthcare fraud is defined as an attempt to deliberately create a profit that should not be made either by individuals or institutions. Fraud or fraud within JKN is an act committed deliberately by participants, BPJS health officers, healthcare providers, as well as drug and healthcare suppliers, to obtain financial benefits from health insurance programs within the National Social Security system through fraudulent acts that do not comply with the provisions. Fraud can be committed by insured participants, insurance organizers, and healthcare providers (PPK). Fraud in PPK hospitals can be caused by hospital dissatisfaction with INA CBG rates<sup>7</sup>. INA-CBG's is a payment system with a package system based on the disease suffered by the patient. As for the possibility of fraud in INA-CBG's<sup>8</sup>:

- Tendency to upcode
- Tendency to unbundle
- Tender to be returned prematurely
- Patients are asked to go home and return to the hospital
- Patients do not go home, but details in the administration of return and return admission to the hospital
- Increased severity level without supporting evidence

Furthermore, the motivation to seek “economic gain” can lead the PPK to commit fraud. As has been mentioned above, issuing Permenkes No. 36 for the year 2015 is one of the attempts to prevent fraud in the implementation of the Health Insurance Program on the National Social Security System. Fraud in the BPJS needs to be prevented so as not to cause loss. As stipulated in Article 7 of Permenkes No. 36 of 2015, in the maintenance of the Health Insurance Program in the National Social Security System, BPJS Health, the District/City Health Service, and Advanced Level Reference Health Facilities (FKRTL) that cooperate with BPJS must build a JKN fraud prevention system. Timboel Siregar acts as BPJS Watch coordinator, admitting that not a few hospitals conduct fraudulent practices (fraud). BPJS of Health Chief M. Iqbal Anas Ma'ruf said BPJS health and hospital management must coordinate when there are complaints related to the matter. So far, BPJS of Health still has good expectations that the hospital remains committed to quality of service, but if something unexpected happens as a result of hospital fraud, then the responsibility is fully borne by the hospital and the doctors concerned.

<sup>7</sup> Tatik Sri Hartati, *Jurnal Hukum : Pencegahan Kecurangan (Fraud) Dalam Pelaksanaan Program Jaminan Kesehatan Pada Sistem Jaminan Sosial Kesehatan (SJSN) di Rumah Sakit Daerah Menggala Tulang Bawang*, Volume 10 Nomor 4, Oktober-November 2016.

<sup>8</sup> Dika Irawan, BPJS Kesehatan: Tidak Ada Pembatasan Hari Rawat, <https://finansial.bisnis.com/read/20181126/215/863256/bpjs-kesehatan-tidak-ada-pembatasan-hari-rawat>,

### 3. Concept of the State of Law and Protection of Patient Rights

The rule of law aims to establish a legal order so that everything runs according to the law. The rule of law is a state whose order is best established by law, so that all the power of the instruments of its government is based on the law. It is not a state beloved by men, but by law. (State that it is not governed by men but by laws). Therefore, in a state of law, the people must submit and obey the rules of the state, so that the rights of the people are fully guaranteed by the state. The law is a rule that can prevent a ruler from acting arbitrarily. There is a law that can limit freedom between the individual and the ruler in any social interaction, so the law is the protection of human rights and general peace. Without the rule of law in society, there will be chaos.

The law requires justice to create peace in society. Law is not just about upholding justice. Because an unjust law is against its own existence. Hospitals are institutions of health care that provide full-fledged individual health care, including nursing care, street care, and emergency services. They are organized on the basis of Pancasila and is based on the values of ethics, humanity, and professionalism, justice, benefits, equality of rights and anti-discrimination, governance, safety and protection of patients, and has a social function. These values are the elaboration or embodiment of the values contained in the fifth principle of Pancasila. This is something that is sometimes overlooked or forgotten in society, especially in practice in hospitals. Even though it is a very basic problem for human life.

In order to improve the level of public health, several hospitals that have cooperated with BPJS through cooperation agreements (PKS) are expected to be willing to serve BPJS patients in accordance with the provisions of the SJSN Act 2004. However, as far as observations in hospitals are concerned, the implementation of the BPJS has not been performed optimally. Hospitals that practice fraud have set treatment time limits for BPJS of Health participants. With no agreement, each participant in the BPJS Health/patient hospital facility ceases to receive treatment when the day of care has reached three (3) days without considering the condition of the patient himself. This is in violation of article 52 letter c of Act No. 29 of 2004 on Medical Practice (hereinafter referred to as UUPK 2004) namely the right of patients to receive services according to their medical needs. As with the events, such conditions clearly put the patient in a very weak position, while the patient is entitled to receive services according to medical needs. The above phenomenon indirectly illustrates that the implementation of the cooperation agreement between the BPJS and the hospital is not fully running optimally. Such conditions clearly create a clash between the establishment of hospitals and the fulfilment of patients' rights. Therefore, we are authors, using the theory of the rule of law as a knife of analysis in research. Where in the application of the concept of the rule of law it is closely related to the protection and fulfillment of basic human rights (and this is included in one of the human rights). Fulfillment of basic rights is the human (patient) right to live a healthy life. Therefore, the fulfillment of patient rights here cannot be limited by cooperation between the hospital and BPJS through a Cooperation Agreement (PKS), where treatment time for BPJS of Health participants is limited to 3 (three) days. Without an agreement, every BPJS of Health facility participant/hospital patient stops receiving treatment when the treatment days have reached 3 (three) days without considering the patient's condition.

### **Conclusion**

Hospitals are institutions of health care that provide full-fledged individual health care, providing nursing care, street care and emergency services. It is organized on the basis of Pancasila and is based on values of ethics, humanity, justice, benefits, and professionalism, equality of rights and anti-discrimination, extortion, safety and protection of patients, and has a social function. Hospitals that cooperate with BPJS of Health should not set time limits for treatment and then return patients to hospitals before they are eligible to return home and without considering the humanitarian and safety aspects of patients. If the hospital does that, then they could be considered a fraud against the Cooperation

Agreement. (PKS). In Article 7 of Permenkes No. 36 of 2015 that in the maintenance of the Health Assurance Programme in the National Social Security System, BPJS of Health, the District/City Health Service, and Advanced Level Reference Health Facilities (FKRTL) that cooperate with BPJS, must build a JKN fraud prevention system.

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