

## Legal Protection Of Health Bpjs Accountability Regarding Hospital Refuse For BPJS Program Participants

Yeni Nuraeni

Program Studi Ilmu Hukum, Pascasarjana Universitas Pakuan

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### ARTICLE INFO

Keywords:

Legal Protection,  
Hospital Refusal,  
BPJS Program

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### ABSTRACT

The government as a state implementing agency must strive for health insurance for every citizen, so that every citizen truly gets the right and protection to be healthy, as stipulated in Law Number 40 of 2004 concerning the National Social Security System. In fact, many residents complain about being rejected by the hospital when they are seeking treatment using BPJS services. The purpose of this study was to find out the reasons for the hospital's refusal of patients participating in the Social Security Administering Body (BPJS), and to find out the form of legal protection for BPJS Health's accountability regarding hospital refusal to the BPJS program participant community. The method used in this study is descriptive analytical with a normative juridical approach. The results of the study stated that there were cases of refusal from several hospitals to patients in terms of providing emergency services, this arrangement was explained in the RI Minister of Health. Number 1 of 2012 concerning the Individual Health Service Referral System. Rejection on purpose or in room mode has violated the MoU with BPJS as well as Law no. 24 of 2011 concerning BPJS. All patients must be accepted and served properly, no rejections. According to Law Number 24 of 2011 concerning BPJS, private and government hospitals are prohibited from turning away patients or asking for advance payments as regulated in Article 85 of the health Law. As for the suggestions that the author wants to convey, it is necessary to carry out more socialization to the community so that they can use BPJS Health properly. By taking into account the aspects of liquidity, solvency, prudence, security of funds, and adequate results and there should be strict sanctions for refusal of hospitals that are BPJS Health partners and addition of hospitals that are BPJS partners

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Email :

[yeni.nuraeni@unpak.ac.id](mailto:yeni.nuraeni@unpak.ac.id)

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### INTRODUCTION

Development in the health sector is directed at increasing the degree of public health in general and at realizing a healthy life in accordance with the national health system for the sake of creating a healthy society (Rondonuwu, 2018). Health social security is indispensable as a means of guaranteeing the Indonesian people to obtain health care benefits and protection in meeting the basic health needs provided to everyone who has paid contributions or whose contributions are paid by the government (Yustisia, 2014: 7).

Health insurance is a basic right contained in the 1945 Constitution of the Republic of Indonesia, paragraph 4, namely to promote public welfare, which is then translated into Article 28H paragraph (3), and Article 4 of Law Number 36 of 2009 concerning Health (hereinafter referred to as the health Law) "Every person has the right to health". It is this fulfillment of health that is evenly distributed and does not discriminate. This has given birth to the government's idea

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to make further arrangements regarding health security. Health services are crucial in the practice of administering the state. As a manifestation of fulfilling human rights, health services must be the main concern of the government (Kalingga et al, 2021). These efforts have been made by the government, one of which is by issuing Law Number 40 of 2004 concerning the National Social Security System (hereinafter referred to as the SJSN Law). The health Law emphasizes that everyone has the same right to gain access to resources in the health sector and to obtain safe, quality and affordable health services (Hartati et al, 2021).

In its implementation, there are several parties involved in the National Health Insurance (JKN), namely BPJS Health as the organizing body, the hospital as a health facility that supports the implementation of the JKN program, and the public who have paid contributions as JKN participants, as well as collaboration with health facilities and hospital. Services from hospitals that are expected by the government to increase and help the community and ease the burden on people seeking treatment with the establishment of the BPJS (Aulia, Suryamizon & Syuryani, 2023). Hospital management is aimed at facilitating community access to health services. The hospital is not (person) which consists of humans as (natuurlijk persoon) but the hospital is given legal status as (person) which is (rechtspersoon) so that the hospital is given rights and obligations according to law (Koeswadji, 2002: 91).

With the issuance of Regulation of the Minister of Health No. 40 of 2012 concerning Guidelines for the Implementation of the Public Health Insurance Program, it is hoped that the poor will receive better health services than before. However, in the implementation of the Community Health Insurance that has been carried out, of course, there are problems faced by both Jamkesmas participants and health service providers. Speaking of social security protection program participation, participants who are still not optimally protected are participants from economically disadvantaged groups, where the dominant influencing factor is lack of funds.

BPJS Health is a social insurance administering body with an initial rate of Class 1 BPJS Health of only Rp. 59,500.00 but after 1 April 2016, the President of the Republic of Indonesia Mr. IR Joko Widodo has given his approval for the increase in Class 1 BPJS Health rates to IDR. 80,000.00. This increase in rates is based on Presidential Regulation Number 19 of 2016 concerning changes to Presidential Regulation Number 12 of 2013 concerning Health Insurance. Health development is directed at increasing awareness, willingness and ability to live healthily for everyone so that the highest possible improvement in the health status of citizens in a country can be realized (Gunadi & Nursida, 2019).

In its journey, the Health Social Security Administering Body (BPJS) program is running, there are many health service problems that are often complained of by the community. Like, Refusal of patient referrals and fraud from health care providers. The refusal of patients participating in BPJS generally occurs in patients who need long health care. This is because the cost of treatment received by the hospital from BPJS contributions does not differ between those who are treated for four days and ten days. Limited BPJS contributions, with a certain nominal depending on class, often make the hospital lose money due to costs that must be borne by the hospital after the BPJS contributions are no longer able to cover the costs needed by patients.

Basically, there is no reason to refuse BPJS because it will definitely be paid, in fact the hospital will be paid through BPJS. Therefore, this study aims to review legally the legal protection of BPJS Health accountability regarding hospital rejection of BPJS Program Participants according to Law Number 24 of 2011 concerning Social Security Administrative Bodies. The research

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questions to guide the analysis are described as follows: First, the reasons for the hospital's refusal of patients participating in the Social Security Administering Body (BPJS); secondly, the form of legal protection for BPJS Kesehatan accountability regarding Hospital Refusal for BPJS Program Participating Communities according to Law No. 24 of 2011 concerning BPJS.

#### METHOD

The research was carried out in an analytical descriptive manner, namely a research method carried out by describing or describing facts in the form of secondary data on primary legal materials (laws and regulations), secondary data on secondary legal materials (expert opinions or doctrine), and secondary data on tertiary legal materials (data obtained from magazines, articles and other sources) (Abdul Kadir, 2004: 50). Normative legal research method or library law research method is a method or method used in legal research which is carried out by examining existing library materials (Soekanto, 2009: 13–14). Data collection techniques were carried out by using general literature study research, reviewing laws and regulations, journals, textbooks and articles and field studies via the internet by opening websites or websites available on the internet. Data analysis was carried out with qualitative juridical, meaning that firstly by looking at legal legislation where one legislation does not contradict each other. The second is by paying attention to the existing statutory hierarchy, meaning that the provisions made must not contradict the provisions higher above them.

#### RESULTS AND DISCUSSION

##### 1. Reasons for the hospital's refusal of patients participating in the Social Security Administering Body (BPJS)

There are several procedures that must be done to get health services. BPJS Kesehatan patients must understand the BPJS referral system, because this is a must to obey if they want the medical expenses to be borne by BPJS Kesehatan. The procedures that must be fulfilled by BPJS Kesehatan patients so that the medical expenses are fully borne by the BPJS are: 1) Following the Treatment Sequence Procedure, 2) Treatment Handling, 3) Bringing Referral Cards to the Hospital, 4) Being able to go directly to the hospital for emergency patients.

When registering for BPJS, the BPJS officer will usually ask you to choose the first-level health facility. Based on the Regulation of the Minister of Health Number 71 of 2013 concerning Health Services at the National Health Insurance, those included in PPK 1 (first level health service providers) are: 1) Community Health Centers, 2) Clinics, 3) Class D Hospitals, 4) Doctor's Practice or Physician's Tooth. At the location of health facilities at the BPJS patient level, they will get an examination, as well as free treatment. If they really have to be referred for hospitalization, then the BPJS patient will be asked to determine which hospital is cooperating with BPJS to be referred, then they will get a referral letter from the doctor concerned.

Related to the existence of cases of refusal from several hospitals to patients in terms of providing emergency services, health facilities, both cooperating and not cooperating with BPJS Kesehatan, which ultimately left patients untreated and the effect was to cause patients to die. As long as the BPJS program is running, many health service problems are often complained of by the public. Such as, refusal of referral patients and fraud from health care providers. That the rejection of patients participating in BPJS generally occurs in patients who need long health care. The reason

is that the hospital is full. There are no empty rooms to accommodate. As a result, patients who hold BPJS, who in fact come from the lower classes, have to go home while biting their fingers.

Many hospitals refuse for various reasons ranging from full wards to being asked for a down payment. Of course, these two incidents saddened everyone who experienced them, especially if they were confronted with economic problems. Even though on the other hand, there are regulations that oblige hospitals not to refuse medical treatment to patients. Among the problems faced by hospitals is the low BPJS fees which have an impact on the low cost of covering patients. The amount of costs incurred by the hospital are often not comparable to the cover costs. This caused dissatisfaction from the hospital.

Private hospitals may apply a subtle way of refusing BPJS patients so that the operational costs they incur do not inflate. Another way to do this is to refer BPJS patients to local hospitals whose operations are funded by the government. In an emergency situation, health service facilities, both government and private, are prohibited from rejecting patients and/or asking for advance payments. This is confirmed in Article 32 paragraph (2). The same is also regulated in Article 85 of the Health Law on Health Law:

1. In an emergency, health care facilities, both government and private, are obliged to provide health services during a disaster to save the lives of patients and prevent disability, which reads:
2. Health service facilities in providing health services during a disaster as referred to in paragraph (1) are prohibited from rejecting patients and/or asking for a down payment in advance.

However, this article does not specifically explain the form of patient rejection by the hospital as a health service, whether the patient was in an emergency situation or in the event of a disaster.

Regarding the availability of medical devices, basically, hospitals must meet the requirements for location, building, infrastructure, human resources, pharmacy, and equipment, as stated in Article 7 paragraph (1) of the Hospital Law. The requirements for equipment as referred to in Article 7 paragraph (1) of the Hospital Law include medical and non-medical equipment that must meet service standards, quality requirements, security, safety and proper use of Article 16 paragraph (1) of the Hospital Law.

If a hospital must be forced to refuse patients due to the unavailability of medical equipment, this is related to the referral network and system regulated in Part Four Chapter IX of the Hospital Law on Implementation. What is meant by a network includes the provision of tools as referred to in Article 41 of the Hospital Law which reads:

1. The government and hospital associations form a network in order to improve health services.
2. The network as referred to in paragraph (1) includes information, infrastructure, services, referrals, provision of equipment, and education of Personnel.

The referral system is the administration of health that regulates the delegation of duties and responsibilities reciprocally both vertically and horizontally, as well as structurally and functionally towards cases of illness or disease or health problems Article 42 paragraph (1) of the Hospital Law.

Article 42 paragraph (2) of the Hospital Law stipulates that every hospital has the obligation to refer patients who need services beyond the capacity of hospital services. This means, if indeed a hospital is forced to refuse patients because of the unavailability of medical equipment, then the

hospital concerned is obliged to refer to other hospitals that are members of its referral system and have more complete medical equipment, so that the patient gets the health services he needs.

In other words, a hospital that does not have medical equipment because it is beyond their capacity may refuse patients and this is not prohibited by law. The form of responsibility is to provide referrals to other hospitals for health services.

Among the problems faced by hospitals is the low BPJS fees which have an impact on the low cost of covering patients. The amount of costs incurred by the hospital are often not comparable to the cover costs. This caused dissatisfaction from the hospital. Limited BPJS contributions, with a certain nominal depending on class, often make the hospital lose money due to costs that must be borne by the hospital after the BPJS contributions are no longer able to cover the costs needed by patients. For example, a patient with a certain disease can be treated effectively for four days. BPJS contributions for these patients can only accommodate four days of treatment, but the patient's condition requires them to be treated longer, so the hospital must bear the patient's costs.

This phenomenon occurs because the hospital does not want to lose money either. Because hospitals also need cash flow, while BPJS claims take a long time. The factor was that the hospital's liquidity had an effect, because BPJS disbursed the hospital's claims within 14 days. Finally took a solution by setting aside a number of rooms for general patients, who pay cash. Another fact, there is still a lack of awareness of BPJS participants to pay monthly contributions. Most of the people become participants of BPJS Kesehatan when they want to get medical treatment. The attitude of the participants like that only burdens the BPJS Health budget, so that a deficit is unavoidable.

The burden on BPJS Kesehatan increases when participants no longer pay their regular contributions after receiving medical treatment. It can be found all over Indonesia. Therefore, if BPJS Kesehatan does not immediately carry out an evaluation, it will actually be detrimental to the business entity itself, including participants who routinely pay contributions according to the provisions. BPJS Health's problem is not only a matter of complicated and convoluted administration, chaotic hospital services, many cases of rejection of poor patients, but actually stems from the legal foundations of this system, namely the National Social Security System and BPJS.

## 2. Forms of legal protection for BPJS Health accountability regarding hospital refusal of BPJS program participants

The rights granted to BPJS Kesehatan patients are not fully fulfilled by the hospital. So that the form of legal protection for BPJS Kesehatan participants is the establishment of rules and policies that can protect the civil rights of BPJS Kesehatan participants. Fulfillment of rights must be granted by the hospital as a health agency. The form of legal protection for the civil rights of BPJS Kesehatan participants in obtaining health services can be in the form of preventive legal protection and repressive legal protection. The position of preventive legal protection for BPJS Health participants is that the state represented by the local government provides good, safe and quality health service facilities for BPJS Health participants.

The hospital as the institution responsible for providing health services to BPJS Health participants is obliged to provide professional and responsible medical personnel, accept criticism and suggestions given by patients or families of BPJS Health participants for the health services provided, and provide protection for safety. patient according to the explanation of Article 3 letter

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b and the Elucidation of Article 43 paragraph (1) of Law Number 44 of 2009 concerning Hospitals and reporting on patient safety guarantees to the committee in charge of patient safety determined by the Minister in accordance with Article 43 paragraph (2) , (3), and (4).

The position of repressive legal protection is to accept complaints from BPJS Kesehatan participants about the health services provided by the hospital, give freedom to BPJS Kesehatan participants to ask for compensation if they feel and it is proven that the hospital has made a mistake or negligence in providing health services, carry out healing for medical actions that have been carried out by the hospital as a form of compensation, accepting and correcting errors that occur as a result of the performance of health agencies, and being responsible for losses caused by negligence or mistakes made by the medical team.

Legal protection for patients who use JKN are all efforts that guarantee legal certainty to provide protection for patients who use JKN. This can be seen from the implementation of health services including the implementation of the rights and obligations of patients, the responsibility of the hospital as a service provider in the JKN program in health services for patients and the legal remedies that can be taken by JKN-using patients. In general, patients are protected by the Health Act. JKN-user patients, in addition to being given legal protection based on the Health Act, JKN patients are also protected in its implementation, which is regulated in the JKN Implementation Guidelines issued by the Ministry of Health of the Republic of Indonesia.

BPJS Health participants are also protected in the health Law which refers to the National Social Security Law. When BPJS user participants feel aggrieved regarding lengthy administration or unsatisfactory service or feel disadvantaged by other participants, the BPJS user participants can ask for rights that have been regulated by law. Law Number 8 of 1999 concerning Consumer Protection, applies in general, including to patients, so it is also necessary to get the attention of parties related to health services. Consumers (patients) in the delivery of health services are key stakeholders, so they must be properly placed in service management for both general patients and patients with the BPJS health insurance program.

Hospitals or health workers who refuse patients in emergencies can be punished and fined as regulated in Article 190 of the health Law.

- (1) Leaders of health service facilities and/or health workers who practice or work at health service facilities who intentionally do not provide first aid to patients in emergency situations as referred to in Article 32 paragraph (2) or Article 85 paragraph (2) shall be subject to imprisonment for a maximum of 2 (two) years and a fine for a maximum of Rp. 200,000,000.00 (two hundred million rupiah).
- (2) In the event that the act as referred to in paragraph (1) results in disability or death, the head of the health service facility and/or the health worker shall be punished with imprisonment for a maximum of 10 (ten) years and a fine of up to Rp. 1,000,000,000. 00 (one billion rupiah).

Unlawful acts do not only include acts that are contrary to the criminal law, but if the act is contrary to other laws and even to unwritten legal provisions. The statutory provisions for unlawful acts are aimed at protecting and providing compensation to the aggrieved party (Komariah, 2001: 12).

Based on Article 29 paragraph (1) letter c of the Hospital Law, hospitals are required to provide emergency services to patients in accordance with their service capabilities. So, an accident victim who experiences an emergency situation should be immediately treated by the hospital to save his life. If a hospital violates the obligations referred to in Article 29 of the Hospital Law, the

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hospital is subject to administrative sanctions in the form of (Article 29 paragraph (2) of the Hospital Law):

1. Reprimand;
2. Written Reprimand; or
3. Fines and Hospital Permit Revocation.

Regulation of the Indonesian Medical Council Number 4 of 2011 concerning the Professional Discipline of Doctors and Dentists which we accessed from the official website of the Indonesian Medical Council states that not providing medical treatment to patients in an emergency is a form of Violation of the Professional Discipline of Doctors and Dentists referred to in Article 3 paragraph (2) letter o KKI Regulation 4/2011 which among other things says that one of the violations of discipline of doctors and dentists is not performing emergency assistance on the basis of humanity, even though it does not endanger himself, unless he is sure that someone else is on duty and is capable do it. The explanation says that:

1. Helping others who need help is a fundamental obligation for every human being, especially for the profession of Doctors and Dentists in health care facilities.
2. This obligation can be waived if it endangers himself or if there are other individuals who are willing and able to do it or because there are other provisions that have been regulated by certain health care facilities.

Article 17 of the Indonesian Code of Medical Ethics which, among other things, also emphasizes that every doctor is obliged to provide emergency assistance as a form of humanitarian duty, unless he is sure that someone else is willing and able to give it.

The form of sanctions given by the Social Security Administrative Body (BPJS) to hospitals that reject participants from the Social Security Administrative Body (BPJS) is that the Government, in supporting BPJS operations, especially in the context of law enforcement, the government regulates the possibility of imposing sanctions on hospitals that commit rejection of BPJS participants, the government issued at least two special government regulations.

Government Regulation No. 86 of 2013 concerning Procedures for Imposing Administrative Sanctions on Employers Other than State Officials and Everyone, Apart from Employers, Employees, and Recipients of Contribution Assistance in the Implementation of Social Security. Government Regulation No. 88 of 2013 concerning Procedures for Imposing Administrative Sanctions for Members of the Supervisory Board and Members of the Board of Directors of the Social Security Administration Agency.

## CONCLUSION

Related to the cases of refusal from several hospitals to patients in terms of providing emergency services, health facilities both cooperating and not cooperating with BPJS Kesehatan with the reason that the hospital is full, there are no empty rooms and the availability of medical equipment, basically, Hospitals must meet the requirements for location, building, infrastructure, human resources, pharmaceuticals and equipment, as referred to in Article 7 paragraph (1) of the Hospital Law. This arrangement is further explained in the Regulation of the Minister of Health of the Republic of Indonesia Number 1 of 2012 concerning the Individual Health Service Referral System (hereinafter referred to as the Minister of Health 1/2012). Rejection on purpose or in room mode has violated the MoU with BPJS as well as Law no. 24 of 2011 concerning BPJS

implementing JKN and Permenkes No 71 of 2013 concerning Health Services in the National Health Insurance. Moreover, the refusal is not based on strong reasons. All patients must be accepted and served properly, no rejections. Service must be prioritized. Moreover, the patient is a participant in a health insurance program. Forms of Legal Protection for BPJS Health Accountability Concerning Hospital Rejection of Community Participants in the BPJS Program according to Law Number 24 of 2011 concerning BPJS that private and government hospitals are prohibited from rejecting patients or asking for advance payments as regulated in Article 85 of the Health Law, Article 7 paragraph (1) that the requirements for a hospital include medical and non-medical equipment must meet service standards. Requirements for quality, security, safety and proper use. In accordance with Article 7 paragraph (1) hospitals that do not meet these requirements are not given a building permit, revoked or extended operating permits so that there is no reason for the hospital to refuse BPJS participant patients, if the hospital turns out to not have complete or adequate equipment. to treat the patient. The form of legal protection for the civil rights of BPJS Kesehatan participants in obtaining health services can be in the form of preventive legal protection and repressive legal protection.

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