

Health Justice in BPJS Services

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Abstract

This study aims to find out health justice in BPJS service. In the study conducted, the author uses a qualitative descriptive approach method, the documents referred to in this study are the 1945 Constitution, Law Number 24 of 2011 against the Social Security Organizing Agency, Law Number 39 of 1999 concerning Human Rights, Law Number 8 of 1999 concerning Consumer Protection, and the Indonesian Code of Medical Ethics. The results of this study state that bad services carried out by BPJS Kesehatan are considered to violate the provisions of the laws and regulations in force in the Republic of Indonesia, because the emergence of poor health services that are held has the potential to make patients worse their sick condition, or even patients can die. Viewed from the perspective of the 1945 Constitution of the Republic of Indonesia, the number of cases that occur in patients, as mentioned in the background of the study, shows that BPJS Kesehatan has violated Article 28 H paragraph (1) and paragraph (3), and Article 34 paragraph (2).

Keywords: *health, services, BPJS.*

INTRODUCTION

Background of the problem

BPJS Kesehatan (Health Social Security Organizing Agency) is a Public Law Entity that is directly responsible to the President and must organize National Health Insurance for all Indonesian people, especially for Civil Servants, Civil Servant Pension Recipients and TNI/POLRI, Veterans, Independence Pioneers and their families and other Business Entities or ordinary people (Saputra, et al, 2015: 33). The latest data released from official BPJS sources shows that on September 1, 2018, the number of participants reached 201,660,548 people. The number of BPJS participants on February 1, 2019 reached 217,549,455 people or an increase of 15.8 million. With this number of 217 million people, it means that the number of BPJS Health participants has reached 81.8 percent of Indonesia's total population, around 265 million people (<https://bisnis.tempo.co>).

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These figures show that public awareness of the importance of health problems has increased significantly. However, along with the increasing public awareness, it turns out that BPJS as a form of State-Owned Legal Entity (BHMN) in charge of organizing social security programs in the health sector is considered unable to show excellent service to the community (<https://id.wikipedia.org>). As a result, people often experience disappointment when receiving health services at hospitals when they experience health problems (<https://www.republiknews.id>, <http://bpjs-online.com>).

Based on the background of the problems mentioned above, it is interesting for the author to study health justice in BPJS services further.

THEORETICAL FRAMEWORK

Based on the preparation of SJSN (National Social Security System) for the implementation of social security for all Indonesian citizens (Putri, 2014):

1. Based on the human rights and constitutional rights of every individual:

Article 28H paragraph (3) of the 1945 Constitution stipulates, "Everyone has the right to social security that allows his full development as a useful human being.

2. As a manifestation of the State's responsibility in national economic development and social welfare:

Article 34 paragraph (2) of the 1945 Constitution stipulates, "The State develops a social security system for all people and empowers the weak and incapable in accordance with human dignity.

3. Intended to enable everyone to develop themselves as a useful human being.

The 1945 State Constitution of the Republic of Indonesia Article 28H paragraph (3) states, "Everyone has the right to social security that allows his full development as a useful human being.

4. Based on humanitarian principles and related to respect for human dignity

Law No. 40 of 2004 Article 2 stipulates, "The National Social Security System is organized based on humanitarian principles, benefit principles, social justice principles for all Indonesian people."

The explanation of Article 2 of Law No. 40 of 2004 explains that the principle of humanity is related to respect for human dignity.

5. Aims to fulfill the basic needs of a decent life for each participant and their family members.

Law No. 40 of 2004 Article 3 stipulates, "The National Social Security System aims to guarantee the fulfillment of the basic needs of a decent life for each participant and his family members."

Explanation of Law No. 40 of 2004 Article 3 explains that what is meant by the basic needs of life is the essential needs of everyone to live decently, for the realization of social welfare for all Indonesian people.

BPJS is based on the juridical basis of SJSN implementation, namely the Constitution of the Republic of Indonesia Article 28H paragraph (3) and Article 34 paragraph (2). Article 28H paragraph (3) is regulated in the Second Amendment of the 1945 NRI Constitution and Article 34 paragraph (2) is regulated in the Fourth Amendment of the 1945 NRI Constitution.

The Constitution of the Republic of Indonesia Second Amendment (2000) and Fourth Amendment (2002):

Article 28H paragraph (3): "Everyone has the right to social security that enables his or her full development as a useful human being." Article 28H paragraph (3) lists social security as a human right.

Article 34 paragraph (2): "The State shall develop a system of social security for all the people and empower the weak and indigent in accordance with human dignity." Article 34 paragraph (2) puts social security as an element of implementing the national economy and social welfare.

Law no. 40 of 2004 concerning the National Social Security System (SJSN Law) was promulgated on October 19, 2004, to implement the constitutional mandate concerning everyone's constitutional right to social security with comprehensive social security programs for all Indonesian citizens.

The SJSN Law is the legal basis for synchronizing the implementation of various forms of social security that have been implemented by several organizing bodies to reach a wider range of participants and provide greater benefits for each participant (Putri, 2014).

Law No. 24 of 2011 concerning social security organizing bodies (BPJS Law)

the legal basis for establishing social security organizing bodies are BPJS Kesehatan and BPJS Ketenagakerjaan.

BPJS Kesehatan organizes health insurance programs for all Indonesian residents. BPJS Ketenagakerjaan organizes work accident insurance, death insurance, old age insurance, and pension insurance programs for all workers in Indonesia (Dewi, 2023).

The implementation of the social security program was fundamentally changed to provide certainty of protection and social welfare for all Indonesian people. The principle of trust funds is applied. Funds are collected from participant dues as entrustment funds to BPJS to be managed as well as possible to optimize these funds for the welfare of participants.

Article 4 of the SJSN Law stipulates nine principles of SJSN (Putri, 2014).

1. The principle of mutual aid

Togetherness between participants in bearing the burden of social security costs is realized by the obligation of each participant to pay contributions according to the level of salary, wages, or income.

2. Non-profit principle

Business management that prioritizes the use of the results of fund development to provide the maximum benefit for all participants.

3. The principle of openness

Make it easier to access complete, correct, and clear information for each participant.

4. The precautionary principle

Careful fund management, thoroughness, safety, and order.

5. Accountability principle

Program implementation and financial management accurately and accountably.

6. The principle of portability

Provide guarantees on an ongoing basis even if participants change jobs or residences within the territory of the Republic of Indonesia.

7. Principle of compulsory participation

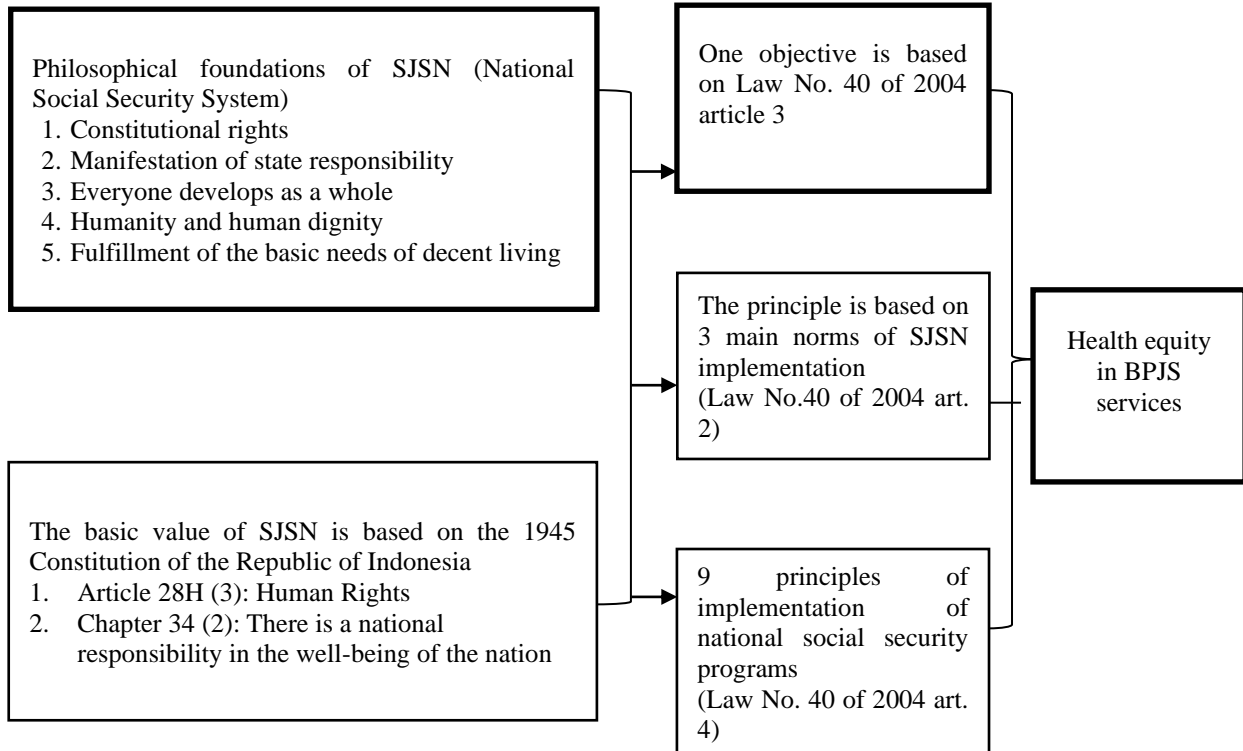
Require the entire population to participate in social security which is implemented gradually.

8. The principle of trust funds

The contribution and the results of its development are entrusted funds from participants to be used as much as possible to benefit social security participants.

9. The principles of the results of the management of the national social security fund are used entirely for program development and the greatest benefit of participants.

The results of the development of social security assets are utilized for the benefit of social security participants.



Source: Saku-2 Book Series: Understanding BPJS Social Security Organizing Agency. Jakarta: Friedrich Ebert Stiftung Indonesian Representative Office (Putri, 2014)

RESEARCH METHODS

In the study conducted, the author uses a qualitative descriptive approach method (Moleong, 2007: 6) by using literature studies or methods of using document materials as a data collection method, because researchers do not directly research and process their data obtained from respondents but examine and copy data or documents produced by other parties (Supramono and Sugiarto, 2003: 16). The documents referred to in this study are the 1945 Constitution, Law Number 24 of 2011 against the Social Security Organizing Agency, Law Number 39 of 1999 concerning Human Rights, Law Number 8 of 1999 concerning Consumer Protection, and the Indonesian Code of Medical Ethics. Meanwhile, the analytical tool used is qualitative data analysis proposed by Miles and Huberman. Qualitative data analysis has three activities: the data reduction stage, data display, and conclusion or verification (Sugiyono, 2006: 164).

RESULTS AND DISCUSSION

The Health Social Security Organizing Agency (BPJS Kesehatan) is a public legal entity responsible to the President. It functions to organize the health insurance program (Article

7 paragraph (1) and paragraph (2), Article 9 paragraph (1) of Law No. 24 of 2011). The Health Social Security Organizing Agency began operating on January 1, 2014 by order of the BPJS Law (Article 60 paragraph (1) of Law No. 24 of 2011).

When BPJS Kesehatan started operating, there was a series of events as follows: (Article 60 paragraph (1) of Law No. 24 of 2011)

- a. PT Askes (Persero) is declared dissolved without liquidation and all assets and liabilities as well as legal rights and obligations of PT Askes (Persero) become assets and liabilities as well as legal rights and obligations of BPJS Kesehatan;
- b. all employees of PT Askes (Persero) become employees of BPJS Kesehatan;
- c. The Minister of State-Owned Enterprises as the General Meeting of Shareholders ratified the closing financial position statement of PT Askes (Persero) after an audit by a public accounting firm;
- d. The Minister of Finance ratified the opening financial position report of BPJS Kesehatan and the opening financial position report of the health insurance fund.

Since BPJS Kesehatan operated on January 1, 2014 in organizing the national health insurance program, individual health service programs have been transferred to BPJS Kesehatan (Article 60 paragraph (2) of Law No. 24 of 2011).

- a. The Ministry of Health no longer organizes the public health insurance program (JAMKESMAS);
- b. The Ministry of Defense, the Indonesian National Armed Forces, and the Indonesian National Police no longer provide health service programs for their participants, except for certain health services related to their operational activities, which Presidential Regulation stipulates;
- c. PT Jamsostek (Persero) no longer organizes health care insurance programs.

The BPJS Law stipulates, "BPJS Kesehatan functions to organize health insurance programs." According to the SJSN Law, health insurance is organized nationally based on the principle of social insurance and equity, to ensure that participants get health care benefits and protection in meeting basic health needs (Andrade, 2023).

In carrying out the functions as mentioned above, BPJS is tasked to:

- a. Conduct and receive participant registration;
- b. Collect and collect dues from participants and employers;
- c. Receive contribution assistance from the government;
- d. Managing social security funds for the benefit of participants;
- e. Collect and manage data on social security program participants;
- f. Pay benefits and finance health services in accordance with the provisions of the social security program;
- g. Provide information about implementing social security programs to participants and the community.

In carrying out its duties as referred to above, BPJS is authorized to:

- a. Collect payment of dues;
- b. Placing the Social Security Fund for short-term and long-term investments taking into account aspects of liquidity, solvency, prudence, safety of funds, and adequate returns;

- c. Supervise and check the compliance of participants and employers in fulfilling their obligations in accordance with the provisions of national social security laws and regulations;
- d. Make agreements with health facilities regarding the amount of payment for health facilities that refer to tariff standards set by the Government;
- e. Make or terminate employment contracts with health facilities;
- f. Imposing administrative sanctions on participants or employers who do not fulfill their obligations;
- g. Report the employer to the competent authority regarding its non-compliance in paying contributions or in fulfilling other obligations in accordance with the provisions of laws and regulations;
- h. Cooperate with other parties in the framework of implementing social security programs.

The authority to collect payment of contributions in the sense of requesting payment in the event of arrears, congestion, or underpayment, the authority to supervise and the authority to impose administrative sanctions given to BPJS strengthens BPJS's position as a public legal entity.

The BPJS Law specifies that to carry out its duties, BPJS is obliged to:

- a. Provide participants with a single identity number. What is meant by "single identity number" is a number specifically given by BPJS to each participant to ensure orderly administration of the rights and obligations of each participant. A single identity number is valid for all social security programs;
- b. Develop social security fund assets and BPJS assets for the maximum benefit of participants;
- c. Provide information through print and electronic mass media regarding performance, financial condition, as well as wealth and results of development. Information on the performance and financial condition of BPJS includes information on the amount of assets and liabilities, receipts, and expenditures for each social security fund, and the number of assets and liabilities, receipts and expenditures of BPJS;
- d. Provide benefits to all participants in accordance with the SJSN Law;
- e. Provide information to participants regarding rights and obligations to follow applicable regulations;
- f. Provide information to participants regarding procedures for obtaining rights and fulfilling obligations;
- g. Provide information to participants regarding the balance of old age insurance (JHT) and its development 1 (one) time in 1 (one) year;
- h. Provide information to participants regarding the amount of pension rights 1 (one) time in 1 (one) year;
- i. Establish technical reserves in accordance with the usual and generally accepted standards of actuarial practice;
- j. Conduct bookkeeping in accordance with applicable accounting standards in the implementation of social security;
- k. Report the implementation of each program, including financial condition, periodically every 6 (six) months to the president with a copy to the djsn.

1. The obligations of BPJS are related to the governance of the BPJS as a public legal entity.

The various provisions in the BPJS Health Law mentioned above can clearly be stated, that after members (the community) carry out their obligations, BPJS Kesehatan has the obligation to provide benefits to all participants, namely providing excellent health services; so that the many problems that arise and adversely affect patients as beneficiaries are certainly a form of violation of the provisions stated in The BPJS Law itself (Mulia, 2021). Even with these conditions, BPJS Kesehatan is considered to have violated the provisions in the laws and regulations in force in the Republic of Indonesia. Because the emergence of poor health services that are held has the potential to make patients become more severe in their sick condition, or even patients can die.

An example of a case that often occurs is the forced repatriation of BPJS patients by the hospital, for example: the case experienced by Endang, 55 years old, a resident of Magersari, Mojokerto City, a patient of BPJS users. Paien was forced home by the hospital and only needed to be outpatient. According to the nurse's confession, outpatient treatment is recommended according to the results of the patient's diagnosis and the examination of an internal medicine specialist, that the patient is in stable condition. Even though according to the family, the patient's condition is still weak, unable to walk, and difficult to chat, plus the right arm looks swollen and breathing is irregular. Even according to the confession of the patient's son, that Thursday starting at 11:00 pm, his mother was not given oxygen, when asked to the nurse he said the oxygen ration ran out. However, after the media crew came to confirm and saw the patient's condition, the hospital nurse installed oxygen again (<https://www.republiknews.id>).

Another case, BPJS patients who ask for forced discharge (Pulang Atas Own Request (APS)) from the hospital, and move to another hospital because they feel that the BPJS referral hospital is considered the patient cannot cure the disease suffered after undergoing hospitalization for several days. The BPJS card will not be valid for use in other hospitals (Vásquez, 2023). This means that patients must bear the cost of their new hospital. This was experienced by Mahmudi, a resident of Sampang Madura, initially he was treated at Sampang Hospital, but after 4 (four) days of treatment, the patient did not show signs of improving condition. Seeing that the patient's condition did not improve, the patient's family was forcibly taken and transferred to the Pamekasan Lung Hospital. After the patient recovers and will be taken home from the Pamekasan Lung Hospital, it turns out that the patient's BPJS card cannot be used, even blocked by the BPJS Pamekasan Branch. So the family is forced to pay the full cost of patient care, even though the patient is always present to pay monthly contributions. "According to the head of BPJS Pamekasan Branch, the BPJS Card cannot be used as long as the diagnosis of the disease is the same. If you forcibly return from the hospital and move to another hospital with the same disease diagnosis, then the BPJS card cannot be used. The penalty is valid until the patient recovers. If you go to the hospital again with another disease, the BPJS card can be used again. Indeed, it cannot be used in 2 (two) hospitals with the same disease diagnosis" (<http://bpjs-online.com>).

Viewed from the perspective of the 1945 Constitution of the Republic of Indonesia, the number of cases that occur in patients, as mentioned in the background of the study, shows that BPJS Kesehatan has violated Article 28 H paragraph (1) and paragraph (3), and Article 34 paragraph (2).

Article 28 H paragraph (1) and paragraph (3) which reads:

"(1) That everyone has the right to live a prosperous, physical and mental life, to live and to have a good and healthy living environment and the right to health services".

"(3) Everyone has the right to social security that enables his full development as a dignified human being",

Article 34 paragraph (2) which reads:

"The State develops a system of social security for all the people and empowers the weak and indigent in accordance with human dignity"

The sound of the articles mentioned above shows that every citizen is obliged to get proper health services, so BPJS Health services that are considered less excellent (poor), as already mentioned, reflect that the services provided by BPJS Kesehatan have violated the provisions of Article 28 H paragraph (1) and paragraph (3), and Article 34 paragraph (2) of the Constitution of the Republic of Indonesia Year 1945.

Viewed from the perspective of Law Number 39 of 1999 concerning Human Rights, BPJS Kesehatan violates Article 9 paragraph (1), Article 36 paragraph (2), and Article 41 paragraph (1).

Article 9 paragraph (1) which reads:

"Everyone has the right to live, sustain life and improve his standard of living".

Article 36 paragraph (2) which reads:

"No one shall be arbitrarily and unlawfully deprived of his property".

Article 41 paragraph (1) which reads:

Every citizen has the right to the social security necessary for a decent life and full personal development.

The implementation of poor health services by BPJS Kesehatan when referring to Article 9 paragraph (1), Article 36 paragraph (2), and Article 41 paragraph (1) violates the provisions of Law Number 39 of 1999 concerning Human Rights.

They are viewed from the perspective of Law Number 8 of 1999 concerning Consumer Protection. Law No. 8 of 1999 concerning Consumer Protection is not regulated regarding the patient, but the patient in this case is also a consumer. In Indonesian legislation, the term "consumer" as a formal juridical definition is found in Law No. 8 of 1999 concerning Consumer Protection (UUPK). Consumer Protection Law No.8 of 1999 states,

"Consumer is every person who uses goods and or services available in society, whether for the benefit of themselves, family, others, or other living beings and not for trade."

Because the patient's position is as a service consumer, he also gets protection in accordance with Law No. 8 of 1999 concerning Consumer Protection. The poor service carried out by BPJS Kesehatan is contrary to the provisions in Law No. 8 of 1999 concerning Consumer Protection (UUPK), especially the provisions in letters (a), (b), (c), (d), and letter (g) of Article 4 concerning consumer rights.

letter (a) of Article 4 reads:

"the right to comfort, security, and safety in consuming goods and services"

letter (b) of Article 4 reads:

"the right to choose goods and services and obtain such goods and services in accordance with the exchange rate and conditions and guarantees promised"

letter (c) of Article 4 reads:

"the right to true, clear, and honest information regarding the conditions and guarantees of goods and services"

letter (d) of Article 4 reads:

"the right to be heard and complaints about the goods and services used"

letter (g) of Article 4 reads:

"the right to be treated or served properly and honestly and non-discriminatory"

Referring to Article 4 concerning consumer rights, it means that patients as consumers have rights that must be fulfilled by BPJS Kesehatan, namely patients have the right to comfort, security, and safety in consuming goods and services, choosing goods and services and obtaining these goods and services in accordance with the exchange rate and conditions and guarantees promised, getting the right information, clear, and honest about the condition and guarantee of goods and services, and has the right to be heard and complaints about the goods and services used (Sari, 2021). Based on this explanation, the poor service carried out by BPJS Kesehatan has violated patients' rights as consumers.

They are viewed from the Indonesian Code of Medical Ethics (KODEKI) perspective. Poor BPJS Health services violate Articles 7 and 9 of the Indonesian Code of Medical Ethics (KODEKI).

Article 7 of the Code reads:

"The task of doctors is to build and develop knowledge to avoid the danger of death"

Article 9 of the Code reads:

"Every doctor must always remember his obligation to protect human life".

Based on the sound of these two articles, it means that a doctor must respect every human life from the moment of conception, so in this case it means that no matter how severe a patient's illness is, every doctor must still protect and care for the patient's life. So, the action of health services that could be more excellent which will be fatal for patients is prohibited.

CONCLUSION

Bad services carried out by BPJS Kesehatan are considered to violate the provisions of the laws and regulations in force in the Republic of Indonesia, because the emergence of poor health services that are held has the potential to make patients worse their sick condition, or even patients can die. Viewed from the perspective of the 1945 Constitution of the Republic of Indonesia, the number of cases that occur in patients, as mentioned in the background of the study, shows that BPJS Kesehatan has violated Article 28 H paragraph (1) and paragraph (3), and Article 34 paragraph (2).

Viewed from the perspective of Law Number 39 of 1999 concerning Human Rights, BPJS Kesehatan violates Article 9 paragraph (1), Article 36 paragraph (2), and Article 41 paragraph (1). Viewed from the perspective of Law Number 8 of 1999 concerning Consumer Protection, poor services carried out by BPJS Kesehatan are contrary to letters (a), (b), (c), (d), and letter (g) of Article 4 concerning consumer rights. Meanwhile, it can be seen from the Indonesian Code of Medical Ethics (KODEKI) perspective. Poor BPJS Health services violate Articles 7 and 9 of the Indonesian Code of Medical Ethics (KODEKI).

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