

HOSPITAL RESPONSIBILITIES AND BPJS PATIENT REJECTION OWING TO LIMITATIONS OF HEALTH FACILITIES

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Abstract

National Health Insurance System administered by the Social Security Organizing Agency with the prevailing policy system causes not all hospitals to cooperate with BPJS. This causes limitations in health facilities availability due to the imbalance in the number of BPJS participating patients with the availability of health facilities. This paper aims to analyze the characteristics of health services collaboration between BPJS and hospitals with pasien as well as the hospitals responsibilities and BPJS for rejection of inpatient services for patients participating in BPJS due to limited health facilities. The legal relationship of BPJS with hospitals or hospitals with patients who are an engagement by agreement. Legal relationship characteristics of BPJS with BPJS participant patients are social (mandatory) because of the engagement that was born due to the law. The legal relationship causes the birth of rights and obligations that must be fulfilled by the parties. If there is an imbalance of rights and obligations there is a form of responsibility that must be fulfilled by the parties.

Keywords: BPJS, Hospitals, BPJS Participants, Rejection, Health Facilities

INTRODUCTION

Indonesian citizen has the right about social security in order to obtain the basic needs of a good life and the prosperous realization. Social security that's very important for the country is health (Rolos, Windy et.al). Health is one of the important sectors in developing the country in forming an Indonesian government that protects the entire Indonesian nation, promotes public welfare, enhances the life of the nation, therefore a healthy and educated society is needed.

Health is a human right and is one of welfare elements that must be realized in accordance with the ideals of the nation. Efforts in maintaining and improving health status are carried out based on the principle of non-discrimination, participatory, and sustainable in the resource formation context. To realize this, the Indonesian people provided a National

Social Security System for all Indonesian people. To realize the National Social Security System it is necessary to establish an organizing body in legal entity form based on the principles of mutual cooperation, non-profit, openness, prudence, accountability, portability, mandatory participation, mandate funds and management also social security results for entire program development and for as much as the number of participants interests is listed in Law Number 24 of 2011 concerning the Social Security Organizing Agency (Hubaibv, A, 2016)

Establishment of *Badan Penyelenggara Jaminan Sosial*(hereinafter referred to BPJS) which, referring to the humanity principle, benefits principle, and the justice principle. The principles of *Sistem Jaminan Sosial Nasional*(hereinafter referred to as SJSN) are binding for BPJS. BPJS as mandated by Law Number 40 of 2004 concerning the National Social Security System must be viewed objectively from all sides, including legal entities, legal consequences and accountability aspects of these institutions.

One of the principles of the BPJS is that membership is mandatory so that Indonesian people are required to take part in National Health Insurance program with the help of contributions from the government or known as *Penerima Bantuan Iuran*(hereinafter referred to as PBI) and are independent. Each participant has the rights and obligations set out in Law Number 24 of 2011 concerning the Social Security Organizing Agency. Participants are entitled to get health care facilities with a referral system starting from first level health care facilities to advanced health care facilities. However, in emergency cases patients can directly come to the nearest health care facility without using a referral (Azlika M.Alamri, et.al).

BPJS participants must receive health services at the *Fasilitas Kesehatan Tingkat Pertama* (hereinafter abbreviated to FKTP), both public health center, doctor's practice, dentist's practice, pratama clinic, or registered class D pratama's hospital. But BPJS participants who are outside the FKTP area where they are registered or in an emergency can go directly to the *Fasilitas Kesehatan Rujukan Tingkat Lanjutan*(hereinafter referred to as FKRTL) (*Ibid*).

The entry into force of National Health Insurance program in Indonesia raises problems from both BPJS, BPJS participants, and also the Hospitals. The referral system and classes established by BPJS cause a lot of complaints from patients who want to get health facilities both at the first level and at the advanced level. One of the complaints that BPJS participants are, when they come to the hospital and got refuses cause empty room. These complaints arise both in social media also print media, and it is not uncommon for patients to directly express these complaints in front of Emergency Department officers. Other

complaints such as rooms in class II are full so that independent BPJS participants in class II must move up to class I or go down to class III are also often complained.

The rejection case of *Jamkesmas* patients in Sumberejo, Bojonegoro Regional Hospital is one example of violations that harm BPJS Health participants. Patients who do labor where they do not have the right to choose the place and delivery services they want, so sometimes this problem becomes one of the weaknesses in BPJS's implementation. Where, there are still many private hospitals that haven't collaborated with BPJS Health by reason that tariffs are cheap and can harm hospitals (Muhammad Roqib, 2015).

Another case occurred in Pematangsiantar, North Sumatra where families of BPJS Health patients went on a rampage at Djasamen Saragih Regional Hospital. The family of this BPJS patient feels that the hospital abandoned his family to death. The patient's family anger began when his mother who was a BPJS Health patient suffered from shortness of breath on Monday, February 16, 2015 and the patient was taken to the hospital. Upon arrival at the hospital, the patient was required by the doctor to be hospitalized but until the afternoon the hospital seemed to abandon his mother and was given only IVs without medication. In addition, despite shortness of breath, patients are also not given oxygen assistance. The family regretted the hospital officer's attitude didn't do maximum towards its mother. According to the patient's family, the service of Djasamen Saragih Regional Hospital was very poor in handling BPJS patients. "Not about we're BPJS patient you are neglected as well, " Said the biological child of BPJS's death patient. Meanwhile the response from the Public Relations Hospital of Djasamen Saragih acknowledged that there was a delay in handling the patient but according to him it was not due to deliberate, but the critical condition of the patient should be treated in the Intensive Care Cardiology Care Unit (hereinafter referred to as ICCU) but at that time the ICCU room was full so the patient had to be treated in Pavilion B room (Rul, 2019).

THEORETICAL FRAMEWORK

1. Theory of Responsibility

Responsibility is the state of being obliged to bear everything (if anything happens may be prosecuted, blamed, sued) (Balai Pustaka Pub, 2017). Meanwhile, according to experts, using the term *verantwoordelijk* which means responsibility is an obligation to assume responsibility and to bear losses (if required or if prosecuted) both in legal and administrative terms (AZ Nasution, 2011).

In legal theory there are 2 (two) types of responsibility notions. The first is responsibility in the narrow sense that is responsibility without sanctions and the second is responsibility in the broad sense that is responsibility with sanctions (Ibid).

The responsibility concept was also put forward by the originator of pure legal theory, according to him responsibility is closely related to obligations, but not identical. The obligation arises because of the existence of legal rules that govern and provide obligations to legal subjects. Legal subjects burdened with obligations must carry out these obligations as ordered by the rule of law. As a result of not carrying out the obligation, it will cause sanctions (Hans Kelsen).

2. Agreement Theory

The agreement is regulated in the Civil Code Article 1313, an agreement or agreement is an act by which one or more people commit themselves to one or more other people. The word agreement comes from the words "overeenkomst" in Dutch, which is also translated with the word agreement. So the agreement in Article 1313 of the Civil Code is the same as the agreement (Prasetyo, 2017).

An agreement is a legal act based on an agreement to cause a legal consequence. It was also in agreement with Sudikno, an agreement was a legal relationship between two or more parties based on an agreement to cause a legal effect.

The principles of agreement law are (Sinaga, 2018):

- a. Consensuality principle, an agreement and an agreement that has arisen has been born since the moment of reaching an agreement, as long as the parties to the agreement do not specify otherwise in accordance with Article 1320 of the Civil Code regarding the legal conditions of the agreement.
- b. Freedom of Contract principle, the parties to the agreement are free to determine the material / content of the agreement as long as it does not conflict with public order, decency, and propriety.
- c. Good faith principle, the agreement must be implemented in good faith. Good faith is translated with honesty divided into 2 (two) types, namely: (1) Good faith when entering into an agreement; and (2) Good faith when exercising the rights and obligations arising from the agreement.
- d. *Pacta sunt servanda* principle, all agreements made by humans are reciprocal in nature intended to be fulfilled and if necessary can be forced, so that it is legally binding. In other words, agreements made legally apply like the enactment of the law for the parties who made them.

- e. Personality principle, this principle is stated in Article 1340 of the Civil Code: "An agreement only applies between the parties that make it. An agreement cannot bring loss to third parties; third parties cannot benefit from it, other than in the case provided for in Article 1317. Article 1315 of the Civil Code states: "In general a person cannot enter into or agreements other than oneself."

2. Social Security Organizing Agency (BPJS)

BPJS is a legal entity established to organize a social security program. The government established Law Number 40 of 2004 concerning National Social Security System (SJSN Law) with the main consideration to provide social security for all Indonesian people. Article 5 Paragraph (1) of the National Social Security System Law states that: "The Social Security Organizing Body must be formed by Law" with a term of 5 years from Law Number 40 of 2004. Therefore, the government established Law Number 24 In 2011 the range of Social Security Organizing Bodies are often familiar with the BPJS Law.

The functions, duties, and authority of BPJS are already regulated in Law Number 24 of 2011 concerning the Social Security Organizing Body, while the duties of the BPJS to carry out their functions are as follows:

- a. Conduct and / or accept Participant registration
- b. Collect and collect contributions from participants and employers
- c. Receive contributions from the Government
- d. Manage Social Security Funds for the interests of Participants

4. Health Services and Health Facilities

Kotler said the definition of service is any action or activity that can be offered by one party to another party which is basically intangible and does not cause any ownership.

Health efforts are any activities to maintain and improve health carried out by the government or the citizen (Notoatmodjo, S. (2007b)). Based on Law Number 36 of 2009 Article 1 paragraph 1, the meaning of efforts or health services is every activity and or series of activities carried out in an integrated, integrated and continuous manner to maintain and improve the level of health, treatment of diseases, and restoration of health by the government and or the community.

Health service facility is a tool and / or place used to carry out health service efforts, both promotive, preventive, curative and rehabilitated carried out by the Government, Regional Government, or public funds which are listed in Article 1 Number 7 of Law Number 36 of 2009 about health.

5. Hospital

Based on Article 1 Republic of Indonesia Law Number 44 Year 2009 concerning Hospitals, hospitals are a form of health service institution that organizes health services and activities that provide inpatient, outpatient and emergency services for public health.

According to Article 4 Republic of Indonesia Law Number 44 Year 2009 regarding Hospitals, hospitals have the task of providing individual health services in a complete manner. Plenary health services are health services that include promotive, preventive, curative, and rehabilitative.

Based on Article 5 Republic of Indonesia Law Number 44 Year 2009, public hospitals have the function:

- Providing medical treatment and health recovery services in accordance with hospital service standards.
- Maintenance and improvement of individual health through complete health services.
- Organizing education and training in human resources in the context of increasing the ability to provide health services.
- Carrying out research and development and screening of health technology in the context of improving health services by taking into account the ethics of health science

Based on Article 18 of the Law of the Republic of Indonesia Number 44 of 2009 concerning Hospitals, hospitals can be divided based on the type of service and management. In Article 19 Republic of Indonesia Law Number 44 of 2009, based on service provided type, Hospitals are categorized in General Hospitals and Special Hospitals.

1. Based on the service type

- Public hospitals
- Provide health services in all fields and diseases types.
- Specialized hospital
- Provides primary services in one particular field or type of disease based on scientific discipline, age group, organ, type of disease, or other specifics.

2. Based on management:

- Public hospitals

Its hospital managed by the government, local government, and non-profit legal entities. Public hospitals managed by the government and regional governments are organized based

on the Public Service Agency management or the Regional Public Service Agency in accordance with statutory provisions.

- Private hospital

Managed by a legal entity with the aim of profit in the form of a Limited Liability Company or Limited Liability Company.

6. Rejection

Rejection has a pragmatic assumption to find out the politeness of the language included by speaker in his speech. Speech rejection is basically speech delivered by the interlocutor as a reaction to speech issued by a speaker (Chaer, A. and Agustina, L, 2010). Meanwhile, according to Kartomihardjo, refusing is to state verbally or nonverbally not to accept or disapprove an invitation, offer or request. Speech rejects expressed with utterances which are sometimes complemented by gestures that mean rejection. According to him, rejection is divided into 7 (seven) forms, namely, using the word no or its equivalent, giving reasons for rejection, using terms or conditions as a substitute for rejection, using proposals or other options, using thank you as a rejection, using comments as a rejection, such as and using nonverbal cues or rejections (Kartomihardjo S, 2000).

7. Theory of Justice

There are two principles of justice as follows 1) Everyone must have the same right to the most basic basic freedoms, the same freedom for all people, 2) socioeconomic inequality must be regulated in such a way that is expected to benefit the people most unlucky and all positions and positions are open to everyone (Ibid).

Justice according to law or what is often referred to is legal justice (legal justice) is justice that has been formulated by law in the form of rights and obligations, where violations of this justice will be confirmed through legal proceedings. So this can show that if someone violates the crime then they are subject to punishment through legal proceedings. The principle of justice is expected to regulate basic rights and freedoms in exchange for social and economic benefits.

Roscoe Pound states that justice sought by law is not always related to morals, but can be a choice of various alternative solutions that are likely to be just and just.

So from a series of definitions it can be concluded that justice is a value that is used to create a balanced relationship between humans by giving what is rightfully a person with proportional procedures and distributions and if there are violations related to justice then one needs to be given a sentence that is able to provide alternative solutions fair and true.

8. BPJS Participant Patients

According to the Indonesian Dictionary Book or KBBI, patient is a sick person (treated by a doctor) (Ebta Setiawan, 2019). While other definitions of patients according to the Health Minister Regulation number 269 / MenKes / Per / III / 2008 concerning Medical Records, Patients are every person who conducts health problems consultations to obtain the necessary health services either directly or indirectly to a doctor or a gig doctor.

Participants registered in BPJS membership also have another definition. Regulated in Article 1 number 4 of Law Number 24 of 2011 concerning the Social Security Organizing Agency states that participants are everyone, including foreigners who work for at least 6 (six) months in Indonesia who have paid contributions.

So according to the above definition it can be concluded that BPJS participant patients are every person including foreigners who work for at least 6 (six) months in Indonesia who are sick or people who are treated by doctors who have paid BPJS contributions.

RESEARCH METHOD

1. Research Type

The research method used in this study uses normative juridical methods based on background, problem formulation and objectives and benefits of this study. Because this research was conducted by analyzing library materials or secondary data compared with applicable legislation related to guaranteeing the fulfillment of the rights of BPJS participants in inpatient services in hospitals.

2. Approach

In this study using the problem in the statutory approach (Statue approach), Comparative Approach, and conceptual approach, the following is an explanation.

a. Conceptual Approach

The conceptual approach is used for problems that do not yet have regulations so that in approaching the problem being studied it uses more concepts or doctrines that develop in the world of law. The use of conceptual approach in this research is to also use concepts in the legal world to answer the problem formulation as a reinforcement of the use of laws and regulations (Peter Mahmud Marzuki, 2017).

b. Approach Legislation (*Statute approach*)

The statute approach is used in legal research that is used for a problem that already has a regulation and then uses the regulation to resolve existing problems (bid).

c. Comparative Approach

Legal comparison is a study method and legal research by conducting legal comparisons. Comparative law aims to obtain information and comparisons of applied law that have specific goals. In this study, Universal Health Coverage will be compared with Asian countries such as the Philippines and European countries such as Germany.

3. Legal Materials

The data used in this study are of three types namely primary legal material, secondary legal material, tertiary legal material and non-legal material with the following explanation:

a. Primary law materials

Consisting of primary legislation law by reading also studying it topic (Peter Mahmud Marzuki). The laws and regulations referred to are:

1. Civil Law Code
2. Criminal Law Code
3. Law of the National Social Security System
4. Hospital Law
5. Health Law
6. The Social Security Organizing Body

b. Secondary Legal Material

Secondary legal material is obtained by reading, studying, and collecting books, journals, papers also scientific articles related to research. This secondary legal material is used as a support for primary legal material to discuss the main problems in this paper.

c. Tertiary Legal Materials

Tertiary legal material is a legal material that serves to provide an explanation of primary and tertiary legal material when both do not get a clear explanation of a word. Therefore, tertiary legal material consists of legal dictionaries and encyclopedias (Deni Bram)

d. Non Legal Materials

Non-legal material researchers found in various articles and the internet to multiply the perspective of the problem being studied.

4. Techniques for Collecting Legal Materials

a. Legal Material Collection Procedure

The collecting procedure of legal material in this study uses library research procedures by collecting documents relating to research problems. After the legal materials

are collected, the next step is to inventory all legal materials and then classified according to the type. Then, the procedure is to arrange legal materials systematically to facilitate research.

b. Legal Material Management

All legal materials that have been collected, inventoried, classified, and systematized are processed by describing, connecting and linking in such a way as to facilitate the process of analyzing legal materials.

5. Legal Material Analysis Method

This research data is processed by describing the observations results using prescription method (Peter Mahmud Marzuki). So that the data purely from the exposure of the resource person is associated with secondary data which is the result of the study of several sources of literature. Likewise, the processing and analysis of legal materials is carried out by collecting, reading, and examining legal materials in Indonesia.

CONCLUSION

A. Conclusion

1. Legal relationship characteristics of BPJS with hospitals or hospitals with patients who are an agreement that was born because of the agreement, the first is freedom of contracting namely freedom to make agreements to anyone as long as it does not conflict with laws and regulations. Second is justice, justice meant here is that each party has the same rights and obligations. Then all parties must carry out the agreed obligations without harming the rights or interests of other parties. Third is good faith, each of them has a good intention to carry out an agreement that has been mutually agreed upon. While the characteristics of the legal relationship of BPJS with BPJS participant patients are social (mandatory) because of the engagement that was born due to the law. So that both parties cannot choose but only carry out what is stipulated by law.
2. The hospital responsibility to patients participating in the BPJS is about providing health services. The hospital will strive to provide good services, but if the hospital has limited health facilities, especially treatment rooms, the hospital can refer to horizontal referrals or refer to hospitals of equal capacity that work closely with BPJS. The responsibility of the hospital to BPJS is to provide information and reports to BPJS to be able to submit claims based on the services provided. The responsibility of BPJS to patients participating in BPJS is to provide information related to hospitals that can provide health services. And the responsibility of the BPJS to the referring hospital is to provide payment for services rendered before finally being referred.

3. The German Health Coverage System requires its citizens to have both public and private insurance where all of the insurance is responsible for one national insurance. Unlike the Philippines, which does not require its citizens to have insurance as long as the government cannot guarantee all the health services of its citizens. And certainly different from Indonesia which requires BPJS membership both those who receive contribution assistance and those who pay premiums independently. This causes the population of Indonesia to have double insurance.

B. Suggestions

1. It is hoped that the government can establish a clear regulatory and cooperation agreement system between hospitals and BPJS, hospitals and patients participating in BPJS so that there is fairness between the rights and obligations of each party. And all Indonesian citizens participate in the health BPJS in order to realize a national health insurance system.
2. Updating the existing referral system that hospitals can refer horizontally and make an online system related to the availability of treatment rooms and create a funding system for hospitals that do referrals and have provided initial health services.

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