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## Legal protection for patients using health social security agency

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### Abstract

The purpose of this research is to find out and regulate the legal protection and responsibilities of health insurance institutions toward health insurance participants. The research method used is the normative research method. Using a legal and analytical approach. The legal material used was tracked using literary techniques. The outcome of this writing is that, given the many cases of discrimination against patients by health insurance agencies, legal protection is necessary to protect the rights of patients from social health insurance agents. Moreover, the responsibility of the health administration and social security institutions is also imperative for patients from the social security administration bodies because the health services provided are not in accordance with the regulations in force. This liability can arise from the receipt of discriminatory complaints from participants in the health insurance organization. Disputes may be settled through mediation or dispute settlement with the state administration, according to the area of residence.

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### 1. Introduction

Social development in the field of health is hampered by societies that do not support a clean and healthy lifestyle. In addition, geographical constraints and accessibility lead to limited access to health services, which leads to less qualified public health status. Social needs and cultural norms must be the basis of health efforts to change specific behaviors. There is a huge need for social entrepreneurs, who are innovative and creative individuals who can build and implement initiatives that enhance well-being and build confidence in society (Wiku Adisasmito, 2007:182) <sup>[7]</sup>.

The Constitution of the World Health Organization (WHO) defines health as when the physical, mental, and social community of a country is in perfect condition, not only physically healthy but also mentally and socially healthy (Ni Putu Grace A. Land *et al.*, 2023: 2674) <sup>[5]</sup>. In order to ensure the well-being of the soul and body, health is one of the essential components. Although the definition is very broad, it doesn't mean it can't be reached by everyone in society (Ngabidin Nurcahyono, 2012:70)

Health services are basically intended to prevent and treat a disease, including medical services based on the relationship between individuals, doctors, and patients in need of healing (K. Bertens, 2011:133) <sup>[2]</sup>. A health service is an institution that offers patient care and therapeutic treatment for illnesses. They can make the correct diagnosis and treatment, perform medical actions in accordance with the standard of medical services, and perform the procedures necessary to help patients recover. Doctors are an important part of the healthcare system. The doctor's endeavor is to ensure that the patient receives the expected compensation for the treatment or recovery of their health.

A civil relationship occurs when two parties to the contract are in the same legal position, at least when the parties enter into a particular legal relationship. In civil relations, a doctor and a patient have a civil legal relationship in which the patient comes to the doctor to get treatment for his illness, and the doctor promises to treat the patient's illness. The legal protection of the patient as a consumer is preceded by the existence of a doctor-patient relationship (K. Bertens, 2011:44) <sup>[2]</sup>.

Hospitals must provide adequate services to patients in the highly developed world of health services because hospitals play a very important role in patient care. Hospitals also play an important role in supporting public health. Patients who use medical services are consumers. This can be reflected in Consumer Protection Law Number 8 of 1999, which states that a consumer is every person who uses goods and/or services available in society, whether for the benefit of themselves, their family, other people, or other living creatures, and not for trading." Therefore, patients are protected by Consumer Protection Law Number 8.

of 1999, Law Number 29 of 2004 concerning Medical Practices, and Health Law Number 36 of 2009

In the 1945 Constitution of the Republic of Indonesia, Article 28 Paragraph (1) explains that *"every person who lives in physical and spiritual prosperity, has a place to live, has a good and healthy living environment, and has the right to receive health services."* Apart from that, Article 34 paragraph (3) also explains that *"the state is responsible for providing adequate health service facilities and public service facilities."*

Article 5, paragraph 1, of Law Number 36 of 2009 concerning health states that *"everyone has the same rights in gaining access to resources in the health sector."* Therefore, the right to health is a basic right of every person, and every citizen, including poor members of society, has the right to an adequate health plan, the implementation of which depends on the financial resources of the federal government and local governments. Therefore, improving the level of public health to a high level, which means building Indonesia's human resources, increasing the country's strength and competence, and developing the country, is very important. In short, the government must be responsible for the welfare of society, especially health.

The Government of Indonesia has established the Health Insurance Social Organizers Agency (BPJS) to deal with public health issues. The government has designated the BPJS as a state-owned company to guarantee health care for the entire population of Indonesia (Depkes RI, 2013). Initially, the BPJS was intended for PNS but was eventually developed for everyone in Indonesia, including private employees, workers, traders, and so on, as long as they meet certain qualifications set by the agency.

The government must ensure adequate health services in the workplace and in public health facilities. PT. Access (Persero) was changed to the Health Social Security Organizing Agency on January 1, 2014. With the formation of BPJS Health, all PT. Access (Persero) switched to BPJS Health as the organizer of social security and as the implementer of the Community Health Insurance program. Article 5 of Law Number 24 of 2011 concerning the Social Security Administering Body shows this (Asih Eka Putri, 2012:249).

In order to guarantee the triumph of the national health insurance scheme, the social security administering body needs to concentrate on many aspects. One of these health jobs is making sure that the infrastructure, personnel, and facilities are adequate. Ensuring universal access to health care is the primary objective of the agency responsible for administering social security. Government and commercial hospitals in Indonesia have collaboration agreements with organizations that oversee social health security. The health and social security administration body's rights and duties with the hospital are outlined in the collaboration agreement. Apart from that, the cooperation agreement explains the patient's right to receive medical treatment, especially for patients who use the social security health administration agency at the hospital. However, many patients who use social security providers for their health do not receive adequate medical care. Based on the explanation above, it seems that there are several questions that must be asked, including: (1) What is the legal protection for patients who use the health services of the health social security administering agency? (2) What are the responsibilities of the social health security administering body towards patients if

their rights are not fulfilled?

## 2. Method

The research method used to discuss this problem is the normative legal research method. Normative legal research is research that examines legal norms. Its function is to provide legal arguments when there is ambiguity, emptiness, or a conflict of norms. According to Peter Mahmud Marzuki, normative research is seen as a process that aims to discover legal rules, legal principles, and legal doctrine in an effort to answer current legal problems (M. Fajar dan Y Achmad, 2013:46) <sup>[3]</sup>. This study uses statutory and conceptual methodology. The primary legal materials used are Law Number 36 of 2009 concerning health and Law Number 24 of 2011 concerning Social Security Administering Bodies. Secondary legal materials are books and journals.

## 3. Results and Discussion

### A. Legal protection for patients who use the health services of the Social Security Administering Agency for Health

The rights and obligations of legal entities are regulated by law. Additionally, law functions as a way to protect the constitution. According to Sudikno Mertokusumo, law functions as the protection of human interests (Sudikno Mertokusumo, 1993:140) <sup>[6]</sup>. According to Satjipto Rahardjo, legal protection is providing protection for human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law (Satjipto Rahardjo, 2000:54)

Patients, as users of health services, face increasing risks as a result of the rapid development of health science and technology. Therefore, for example, the relationship between health workers and patients is not balanced. Based on Law Number 8 of 1999 concerning consumer protection, patients and doctors also have the same rights. This protection primarily focuses on the possibility of a doctor making a mistake due to his or her own negligence.

The World Health Organization (WHO) has determined that health is everyone's right, investment, and responsibility. This is explained by Article 28 paragraph (3) of the 1945 Constitution and Health Law Number 36 of 2009, which stipulates that everyone has the right to health services. Therefore, strategic policies regarding health services for the poor are appreciated by the government. The program changed its name to Poor Community Health Insurance in January 2005 and then changed to Community Health Insurance in 2008.

The purpose of the social security administering body for health is stated in Article 3 of Law Number 24 of 2011 concerning the Social Security Administering Body: *"BPJS aims to realize the provision of security to meet the basic needs of a decent life for each participant and/or their family members."* According to this definition, basic survival needs include basic needs that must be met by every individual in order to ensure the survival and well-being of every Indonesian citizen.

As consumers of health services, participants in health and social security administration bodies have rights that must be protected. Therefore, they can check Article 24 of the Health Social Security Organizing Body Regulation Number 1 of 2014, which explains the rights and obligations of each participant covered by the health social security administering body.

Regulation of the Health Social Security Organizing Body Number 1 of 2014 concerning Health Social Security Organizers Article 25 explains the rights of participants as follows:

- **Each participant has the right to**
  1. Obtain participant identity
  2. Get a virtual account number.
  3. Choose a first-level health facility that collaborates with BPJS Health.
  4. Obtain health insurance benefits
  5. It is to submit complaints to collaborating health facilities and/or BPJS Health.
  6. Obtain health service information, and
  7. Participate in additional health insurance programs.
- Health insurance benefits, as referred to in paragraph (1) letter D, include promotional, preventive, curative, and rehabilitative services in accordance with medical needs in collaboration with BPJS Health.

Based on Article 11 of Law No. 24 of 2011, in carrying out its duties, the health social security administering body has the authority to:

- a) Collect payment of contributions;
- b) Place social security funds for short-term and long-term investments by considering aspects of liquidity, solvency, prudence, security of funds, and results adequate;
- c) Carry out supervision and inspection of the compliance of participants and employers in fulfilling their obligations in accordance with the provisions of national social security laws and regulations.
- d) Make an agreement with the health facility regarding the amount of payment for the health facility, which refers to the standard tariff set by the government.
- e) Make or terminate work contracts with health facilities.
- f) Imposing administrative sanctions on participants or employers who do not fulfill their obligations.
- g) Reporting the employer to the authorized agency regarding non-compliance in paying contributions or fulfilling other obligations in accordance with statutory provisions.
- h) Cooperating with other parties in the context of implementing the Social Security program.

The concept used to provide health services to the community is called health services. Health services are part of the health service system, according to Prof. Soekidjo Notoatmojo. The main goal is to provide the community with preventive and promotional services. Law Number 36 of 2009 concerning health also regulates the definition of health services, which are divided into four types: promotive, preventive, curative, and rehabilitative.

All primary and advanced-level health facilities, as well as other or supporting health facilities, are included in this health service category. Every member of the health social security administering body has the right to health services, as explained in Article 47 paragraph (3) of the Health Social Security Administering Body Regulation Number 1 of 2014 concerning Health Social Security Organizers, which includes ambulance services, emergency services, services at the first and follow-up, and other health services (Tim Visi Yustitia, 2014:9).

However, the health services provided by the social security

health administration body make many patients complain. Many patients receive poor service, such as hospital rejection and complicated administrative processes. This is a violation of patient rights in health services. Therefore, to prevent abuses of patient rights elsewhere, it is crucial that the rights of participants in the social security administering body be given adequate legal protection. To provide legal protection to BPJS Health in terms of obtaining health services from the government, there are regulations that regulate this, including:

1. To implement the five programs stipulated in Law Number 40 of 2004, including the health insurance program for BPJS Health and other programs submitted to BPJS Employment, PT Askes (Persero) and PT Jamsostek (Persero) were transformed into public service agencies by Law Number 24 of 2011.
2. The government, through the Minister of Health, has established regulations governing the implementation of the BPJS health program, including health care rates and procedures.
3. National Social Security System Law and Law Number 24 of 2011 concerning Social Security Administering Bodies.

Health social security administering organizations offer preventative protection, or legal protection that upholds people's rights to their existing rights, to guard against discrimination against hospital patients. It is imperative that preventative protection be provided in order to provide legal protection for those who participate in health and social security administering bodies with regard to inexpensive, high-quality health care.

Repressive legal protection, in addition to preventative legal protection, is legal protection offered by the state to its citizens in order to assist them in resolving conflicts in order to attain justice and certainty. In short, court-centered protection is needed to protect the rights of its citizens, including members of the social health security administration body whose rights are violated. One form of legal protection against discrimination by social security administering bodies is to give patients the right to demand compensation from the relevant hospital. This is in accordance with Article 32 letters q and r of Law Number 44 of 2009 concerning hospitals, and Article 58 paragraph (1) of Law Number 36 of 2009 concerning health regulates the right to claim compensation. Articles 48 to 50 of Law Number 24 of 2011 concerning Social Security Administering Bodies explain how to resolve disputes related to participants in health social security administering bodies.

### **B. Responsibility of the Health and Social Security Administration Agency towards Patients If Their Rights Are Not Fulfilled**

Regarding the obligation of the Social Security Administering Agency for Health to assist patients in reporting to the agency any dissatisfaction they may have with the care they receive at primary healthcare facilities, like community health centers, or secondary healthcare facilities, like hospitals, provided the agency accepts the complaint. Hospitals are one of the health facilities that play an important role in supporting health services. As a result, in addition to following all existing rules and regulations, the implementation of health services in hospitals must be guided by Pancasila, humanitarian, justice, and benefit principles.

Presidential Regulation Number 82 of 2018 concerning Health Insurance stipulates that, in Article 89 paragraphs (2) and (3), a place for complaints must be available for participants in the body administering social health security and health services. These verses are explained as follows:

*“(2) Participants have the right to complain about dissatisfaction with the health insurance services provided by the health facilities and with the BPJS health services to complaint units, whether they are located in the health facilities, BPJS health services, or the Ministry of Health.”*

*“(3) Health facilities and BPJS Health are obliged to provide complaint units that are managed jointly or autonomously by health facilities and BPJS.”*

*One of the responsibilities of the social health security administering body is to handle complaints of dissatisfaction with social health security participants, as regulated in Article 89 paragraph (5), which states that:*

*“(5) The complaint of dissatisfaction submitted by the participant shall be adequately handled, settled in a short time, and feedback given to the submitting party.”*

Process for resolving complaints from members of the health social security administering body: upon receiving a participant complaint, the administering body is required to set up a service quality control unit and address it within five (five) working days. This is where provisions pertaining to complaint resolution and quality control units should be clarified.

Patients have the right to file a complaint in cases where participants in the health care social security administration body or patients experience discrimination or their rights are violated. Law number 24 of 2011 concerning the Social Security Administering Body regulates dispute resolution through mediation and dispute resolution through court, respectively regulated in Articles 49 and 50. These two dispute resolution methods can be used in the dispute resolution process. In terms of dispute resolution, mediation efforts are made to resolve them. However, if these efforts fail, participants in the social health security administering body can submit the dispute to the district court in the area where they live.

### C. Conclusion

Protection from social security organizations that discriminate against patients when providing healthcare services on a legal basis. Patients in this situation are protected by the law in two ways: preventively and repressively. Preventive legal protection helps participants in health and social security administering bodies obtain high-quality health services and protect their rights. The responsibility of the health and social security administration body towards participants is as follows: the information reception area handles participant complaints, which are then resolved through mediation to reach an agreement. However, if this method cannot resolve the problem, then the complaint.

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