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Legal Protection for Patients as Consumers of Hospital Health Services

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Abstract

Cases of rejection of BPJS Health patients in private hospitals often occur and this is an example of a violation that harms the rights of BPJS Health participants. Both from the upper classes of society and the lower classes of society, all of them have the right to proper health. Regardless of intensive care or expensive medicines, every individual (BPJS Health Participant) who seeks treatment at a hospital, clinic, or other health facility has the right to receive medical treatment in the form of good health services according to their respective standards. The approach that the researchers used in this study was a sociological juridical approach. The sociological juridical approach is aimed at reality by looking at the application of law (Das Sein), in this case the legal protection for patients as consumers of health services (BPJS) has not been maximized. The results of this study indicate that the legal protection given to patients participating in BPJS for health according to Law Number 24 of 2011 concerning BPJS is that participants are given the right to submit complaints or complaints about the services provided by the hospital, given advice and information on how participants can obtain their rights. This is regulated in the Health Social Security Administration Agency Regulation No. 1 of 2014 concerning Health Insurance Administration, Article 25 paragraph (1) letter e jo Article 32 Law no. 44 of 2009 concerning Hospitals in conjunction with Law no. 36 of 2009 concerning Health.

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Introduction

The health law that exists in Indonesia today cannot be separated from the legal system adopted by a country and/or society, so there are 2 (two) legal systems in the world, namely the codified civil law system and the common law system ^[1]. Then it is possible to have a mixed legal system, especially for a pluralistic society such as Indonesia, it is possible to adopt a mixed legal system. In relation to this, in order to provide legal certainty and protection, both for health service providers and for health service recipients, to improve, direct and provide a basis for development in the health sector, a dynamic health legal instrument is needed. There have been many changes to health rules, especially regarding the rights and obligations of the parties involved in health efforts and legal protection for the parties involved.

The constitution mandates that everyone has the right to social security. Everyone has the right to fulfill the basic needs of a decent living and to improve their dignity and status towards the creation of a just and prosperous society. The President with the approval of the DPR issued Law Number 40 of 2004 concerning the National Social Security System (hereinafter referred to as the SJSN Law) ^[2]. SJSN aims to provide comprehensive social security for all Indonesian people. Furthermore, for further elaboration on social security, especially health insurance, Presidential Regulation of the Republic of Indonesia Number 82 of 2018 concerning Health Insurance (hereinafter referred to as the Presidential Regulation on Health Insurance).

¹ Zaeni Asyadie, 2008, *Legal Aspects of Social Security for Workers in Indonesia*, 1st ed., Jakarta, Rajawali Pers, pp. 87 and 115

² Afifah, W., & Paruntu, D, 2015, *Legal Protection of Citizens' Health Rights Based on Law Number 24 of 2011 concerning the Social Security Administration Agency*. *Mimbar Keadilan: Journal of Legal Studies*, July-Novem. Retrieved from <https://doi.org/10.30996/mk.v0i0.2117>

The existence of the National Health Insurance (JKN) with the Social Security Administering Body (BPJS) Health as the operator often receives complaints from the public. BPJS Health is often the subject of complaints, as if only BPJS Health is to blame or is the party responsible for the shortcomings that occur in the implementation of JKN. In fact, there are other parties involved in it, namely the government as the regulator, health facilities as the organizers, and JKN participants. There are several complaints from the public about the implementation of JKN, for example, the service is complicated and tiered, JKN is not free even though it is social security, JKN rules are too complicated and always changing, new regulations come out too quickly, and BPJS Health is unable to pay bills from hospitals^[3].

Furthermore, when viewed from the legal relationship that arises between the patient and the hospital, it is divided into two types of agreements, namely: first, a treatment agreement where there is an agreement between the hospital and the patient that the hospital provides a treatment room and where the care personnel performs treatment. Second, a medical service agreement where there is an agreement between the hospital and the patient that the medical personnel at the hospital will try their best to cure the patient through medical actions inspannings verbintenis. Protection of patients has received sufficient attention, but it is very unfortunate that the basic principles in Law Number 23 of 1992 concerning Health, which require implementing regulations until the end of the 20th century and entering the 21st century, have not yet been realized, because the government cq the Ministry of Health of the Republic of Indonesia has so far only been able to make several implementing regulations, including Government Regulation No. 32 of 1996 concerning Health Personnel.

Hospitals in guaranteeing legal protection for doctors/health workers so as not to cause medical errors in treating patients, while patients receive legal protection from the responsibility of the hospital and doctors/health workers. In relation to hospital responsibility, in principle the hospital is civilly responsible for all activities carried out by health workers in accordance with Article 1367 (3) of the Civil Code. In addition, the hospital is also responsible for breach of contract and unlawful acts (1243, 1370, 1371, and 1365 of the Civil Code)^[4].

The public is currently highlighting the implementation of JKN by BPJS Kesehatan due to restrictions on increasing the class of inpatient care. The Minister of Health issued the Minister of Health Regulation Number 51 of 2018 concerning the Charging of Cost Sequence and Cost Differences in the Health Insurance Program (hereinafter referred to as the Minister of Health Regulation concerning the Charging of Costs and Cost Differences in the Health Insurance Program). Article 10 paragraph (5) of the Minister of Health Regulation states: "Increasing the class of treatment that is higher than the patient's rights as referred to in paragraph (1) can only be done one level higher than the class to which the participant is entitled."

The SJSN Law and the Presidential Regulation on Health

Insurance previously regulated the increase in nursing class. Article 51 paragraph (1) of the Presidential Regulation on Health Insurance and the explanation of Article 23 paragraph (4) of the SJSN Law state that JKN participants who are not Contribution Assistance Recipients (hereinafter referred to as independent JKN participants) can increase the treatment of a higher room than their rights by paying the difference between the costs borne by BPJS and the costs that must be paid due to the increase in service class.

Therefore, legal protection is needed for patients (health service recipients), whose rights to receive health care are always ignored. Law Number 23 of 1992 concerning Health provides legal protection, both for patients as recipients (consumers) of health services and providers (producers) of health services, including Articles 53, 54 and 55 of Law Number 23 of 1992. If a dispute occurs between the parties in health services, then to resolve the dispute or disagreement must refer to the health law and the consumer protection law and the process through the courts and mediation.

Cases of BPJS Kesehatan patient rejection in private hospitals often occur and this is one example of a violation that harms the rights of BPJS Kesehatan participants. Both from the upper class and lower class communities, all have the right to decent health. Regardless of intensive care or expensive medicines, every individual (BPJS Kesehatan Participant) who seeks treatment at a hospital, clinic, or other health facility has the right to receive medical treatment in the form of good health services according to their respective doses. Basically, there is no difference in the class of BPJS Kesehatan care for outpatient treatment. Likewise with medicines and quality of service, both class 1, class 2, and class 3 receive the same service. In Article 47 of the Regulation of the Health Social Security Administering Agency Number 1 of 2014 concerning the Implementation of Health Insurance, it is stated that these health services include promotive, preventive, curative, and rehabilitative services including drug services and disposable medical materials according to the medical needs required.

Research Methods

The approach that the researcher uses in this research is a sociological legal approach. The sociological legal approach emphasizes research that aims to obtain legal knowledge empirically by going directly to the object.⁵ Sociological legal research is a legal research using secondary data on the effectiveness of a regulation and research that seeks to find a relationship (correlation) between various symptoms or variables. The sociological legal approach is aimed at reality by looking at the application of law (Das Sein), in this case the less than optimal legal protection for patients as consumers of health services (BPJS). The researcher chose this type of legal research because the researcher saw a gap between the desired legal rules (Das Sollen) and the reality that occurred (Das Sein) in the legal protection of patients as consumers of health services (BPJS).

Discussion

Overview of Legal Protection

Legal protection is the main form of protection because it is

³Rondonuwu, S., Lumunon, T., & Tangkere, C. 2018, Legal Protection for Poor Patients Based on Law Number 44 of 2009 concerning Hospitals. *Lex Et Societatis*, VI(5). Retrieved from <https://ejournal.unsrat.ac.id/index.php/lexetsocietatis/article/view/20354>

⁴Suhartoyo, 2018, Legal Protection for BPJS Health Workers in Hospitals. *Administrative Law & Governance Journal*, 1(2). Retrieved from

[http://download.garuda.ristekdikti.go.id/article.php?article=777674&val=12745&title=Legal Protection for BPJS Health Workers in Hospitals](http://download.garuda.ristekdikti.go.id/article.php?article=777674&val=12745&title=Legal%20Protection%20for%20BPJS%20Health%20Workers%20in%20Hospitals)

⁵J. Supranto, 2003, *Legal and Statistical Research Methods*, PT. Rineka Cipta, Jakarta, p. 2

based on the idea that law is a means that can accommodate consumer interests and rights comprehensively. In addition, the law has a coercive power that is officially recognized in the country, so that it can be implemented permanently. Different from protection through other institutions such as economic or political protection, for example, which is temporary or transient ^[6].

Legal protection consists of two words, namely protection and law. The Great Dictionary of the Indonesian Language, the word protection comes from the word "lindung" which means "being behind something", while according to WJS Poerwadarminto, Protection is all efforts made to protect a particular subject, it can also be interpreted as a place of shelter from anything that threatens and law is a regulation that is agreed upon either in writing or unwritten or what is commonly called a regulation or law that binds the behavior of every particular society ^[7].

Therefore, legal protection is a narrowing of the meaning of protection, in this case only protection by law. Protection provided by law is also related to the existence of rights and obligations, in this case owned by humans as legal subjects in their interactions with other humans and their environment. As legal subjects, humans have the rights and obligations to carry out legal actions.

Legal Protection for Patients as Consumers of Hospital Health Services (JKN)

Patients in Indonesia are legally protected as consumers of Hospital healthcare services through the Consumer Protection Law (Law No. 8 of 1999). This law establishes consumer rights, including the right to obtain accurate and complete information about the products and services they purchase, the right to choose products and services, and the right to receive fair and reasonable treatment. In the context of hospital healthcare, this means that patients have the right to be informed about the services they will receive, the costs associated with those services, and any potential risks or side effects. They also have the right to choose a hospital or healthcare provider of their choice and to receive fair and reasonable care during their time as a patient. In addition, in Indonesia, healthcare providers and Hospitals have a legal obligation to ensure the safety and quality of the services provided, and there are regulations in place to ensure compliance with these standards.

Basically, legal protection must be given to every consumer or user of health services, namely patients. Legal protection is given to protect the rights of consumers as users of goods and/or services of a product produced by a business actor. However, in the provision of health services whose results cannot be ascertained, there will be many complaints or losses suffered by patients as users of health services. The form of legal protection of civil rights of BPJS Kesehatan participants in obtaining health services can be in the form of preventive legal protection and repressive legal protection. The location of preventive legal protection for BPJS Kesehatan participants is the state represented by the regional government providing and providing good, safe, and quality health service facilities for BPJS Kesehatan participants ^[8]. The hospital as an agency 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 regarding the health services provided, and provide protection for patient safety in accordance with the explanation of Article 3 letter b and the explanation of Article 43 paragraph (1) of Law Number 44 of 2009 concerning Hospitals and report on patient safety guarantees to the committee in charge of patient safety as determined by the Minister in accordance with Article 43 paragraphs (2), (3), and (4).

The position of repressive legal protection is to accept complaints from BPJS Kesehatan participants regarding health services provided by the Hospital, provide freedom to BPJS Kesehatan participants to request compensation if they feel and are proven that the Hospital has made a mistake or negligence in providing health services, provide healing for medical actions carried out by the hospital as a form of compensation, accept and correct errors that occur due to the performance of health institutions, and be responsible for losses caused by negligence or errors made by the medical team.

This is related to the National Health Insurance (JKN) developed in Indonesia as part of the National Social Security System (SJSN). This National Social Security System is organized through a mandatory Social Health Insurance mechanism based on Law Number 40 of 2004 concerning the National Social Security System. The goal is for all Indonesian residents to be protected in the insurance system, so that they can meet the basic health needs provided to everyone who has paid contributions or whose contributions are paid by the government ^[9].

Discussion of the legal protection applicable to BPJS health participants according to the National Social Security System Law and the Social Security Administering Agency Law requires an understanding of the rights and obligations of participants in these laws. Matters regarding legal protection in both laws are discussed in several articles that regulate the rights of social security participants. The rights of social security participants in Article 15 of Law Number 40 of 2004 concerning the National Social Security System. Article 20 of the National Social Security System Law in paragraphs 2 and 3 states that: (2) Members of the participant's family are entitled to receive health insurance benefits. (3) Each participant can include other family members as their dependents by increasing contributions.

Article 22 of the National Social Security System Law in paragraph 2 mentions health insurance that includes promotive, preventive, curative, and rehabilitative services, including drugs and necessary disposable medical materials. Article 23 of the National Social Security System Law in paragraph 2 discusses the class of services in Hospitals provided based on standard classes. Participants who want a higher class than their rights (standard class), can increase their rights by taking additional health insurance, or paying the difference between the costs guaranteed by the Social Security Administering Body and the costs that must be paid due to the increase in treatment class. The rights and obligations as a form of legal protection for BPJS Kesehatan

⁶Lubis, Sofyan, 2009, Understanding Consumer and Patient Rights. Yogyakarta: Pustaka Yustisia

⁷Kristiyanti, Celina Tri Siwi, 2008, Consumer Protection Law. Jakarta: Sinar Grafika

⁸Yudithia et al., 2018, Legal Protection for BPJS Health Participants in Health Services at Hospitals. Pactum Law Journal. Vol 1 No. 2

⁹Kusuma Astuti, Endang, 2009, Therapeutic Transactions in Medical Service Efforts in Hospitals. Bandung: Citra Aditya Bakti

participants are regulated in several supporting regulations. The supporting regulations are Regulation of the Health Social Security Administering Body Number 1 of 2014 Concerning the Implementation of Health Insurance.

BPJS Health participants are also protected in the Health Law which refers to the SJSN Law. When BPJS user participants feel disadvantaged regarding long administration or unsatisfactory service or feel discriminated against by other participants, the BPJS user participants can request the rights that have been regulated by law. Law Number 8 of 1999 concerning Consumer Protection, applies generally including patients, so it is also necessary to get attention from parties related to health services. Consumers (patients) in the implementation of health services are key stakeholders, so they must be placed appropriately in service management for both general patients and BPJS health insurance program patients^[10].

Handling complaints is one component to resolve health service issues, both administrative and medical. Problems can occur between participants and BPJS Kesehatan. The mechanisms that can be taken to resolve participant dissatisfaction with BPJS are regulated in the Regulation of the Health Social Security Administering Body Number 2 of 2014 concerning the Quality Control Unit and Handling of Participant Complaints. Article 3 of BPJS Kesehatan Regulation Number 2 of 2014.

Legal protection for patients against hospitals is realized in the form of hospital accountability to patients. This accountability is related to several doctrines that examine the responsibility of hospitals as legal subjects that can be held accountable. Based on civil law, the doctrine related to hospital accountability is liability without fault or what is commonly called *risicoaansprakelijkheid*. *Risicoaansprakelijkheid* is a Dutch term used to translate the term liability without fault. Because it means responsibility without fault, *risicoaansprakelijkheid* has the same meaning as strict liability which is included in the principle of liability without fault^[11].

Hospital liability is classified as liability without fault because the hospital is responsible for the mistakes of its workers, in this case the doctors who work at the hospital, meaning that the hospital did not make a mistake, but is still responsible for the actions of others. The civil law system provides a rationale for the justification of strict liability/principle of liability without fault so that someone can be held responsible for the mistakes of others. Legal protection for patients regarding hospital health services in civil law is regulated in Article 1367 (3) of the Civil Code. In addition, the hospital is also responsible for default and unlawful acts as in Article 1365, Article 1370, and Article 1371 of the Civil Code.

The rights of patients or recipients of health services, in this case BPJS participants, are to receive compensation if the health services received are not as they should be. BPJS health participants as consumers can submit their complaints to the hospital as an effort to improve the hospital's internal services or to institutions that provide attention to health consumers. As a legal basis for lawsuits by consumers or recipients of health services against health service providers, there is Article 1365 of the Civil Code. Dispute resolution in

BPJS Health Services can occur between patients and health facilities that cooperate with BPJS Health, participants with BPJS Health, and between health facilities and BPJS Health. Regulations governing dispute resolution are contained in Article 49 and Article 50 of the BPJS Law and the Regulation of the Health Social Security Administering Agency Number 2 of 2014 concerning the Quality Control Unit and Handling of Participant Complaints.

Closing

Conclusion

Legal protection provided to BPJS health patients according to Law Number 24 of 2011 concerning BPJS is that participants are given the right to submit complaints or grievances regarding services provided by hospitals, given advice and information on how participants can obtain their rights. This is regulated in the Regulation of the Health Social Security Administering Agency No. 1 of 2014 concerning the Implementation of Health Insurance, Article 25 paragraph (1) letter e in conjunction with Article 32 of Law no. 44 of 2009 concerning Hospitals in conjunction with Law no. 36 of 2009 concerning Health. Settlement of disputes in court can be done in two ways, namely civil channels for resolving disputes over compensation from health workers or hospitals due to errors or negligence they have made, and criminal channels which can only be taken if the patient becomes disabled or dies after receiving treatment from the Hospital. Hospitals are expected to provide good service to patients so that there are no more complaints from BPJS Kesehatan patients to the Hospital and are expected to be in accordance with the Hospital's health service implementation procedures which will reduce the possibility of medical errors in the treatment process. This is very important because it concerns a person's safety and also the responsibility of the health workers themselves. The legal protection provided by the government to BPJS Kesehatan patients should be a lesson for hospitals to be able to provide the best possible health services for patients so that patients can be satisfied with the health services at the Hospital and the legal protection regulations for BPJS patients can be used as well as possible by BPJS participant patients and minimize complaints from BPJS patients so that poor health services experienced by patients can be immediately improved by the Hospital for the comfort, satisfaction and safety of BPJS patients in the future.

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