

Overview of the Monopoly Rights of the Social Security Administering Body (BPJS) from the Perspective of Citizens' Health Protection

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ARTICLE INFO

Keywords: Health, Law, Constitution, BPJS

Received : 5 April

Revised : 17 April

Accepted: 22 May

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ABSTRACT

The monopoly right to health protection granted to the Social Security Administration Agency (BPJS) in Law no. 24 of 2011 concerning BPJS is an attempt to organize a health insurance program effectively and efficiently. However, this monopoly right also raises several problems, first, institutional problems in the implementation of the national social security system (SJSN) and related to choosing a hospital location that is not in accordance with the wishes of BPJS participants. In this legal research, it has a normative research type with a statutory approach related to the BPJS monopoly right in health protection. The research results show that in order to ensure that the national health insurance program can run effectively, coordinated and integrated efforts are needed between the government, BPJS Health, health service providers, and the community. The government needs to increase the allocation of the health budget, ensure efficient use of funds, and find alternative sources of funding

INTRODUCTION

As a constitutional state founded on the Constitution of 1945, Indonesia is responsible for enforcing all of its provisions and meeting the needs of its citizens. This includes protecting their lives and liberties, marrying lawfully, having children, receiving an adequate education, being assured of their rights in a fair legal system, practicing their religion of choice, receiving adequate medical care, and so on.

As meant in Article 28 H Paragraph (1) of the 1945 Constitution above, the state is obliged to provide protection and provide health services for all Indonesian people, to fulfill a good health ratio of its citizens, for that every country must have a regulatory system for implementing the health sector so that it can carrying out the mandate of the law.

An understanding of health law is very important to know so that the implementation of health services is in accordance with procedures made by health workers and if there is an error in health services (medical malpractice) it can be resolved with knowledge of health law (Ridwan, 2019). The definition of health law according to Satjipto Rahardjo "Medical law includes regulations and legal decisions regarding the management of medical practice".

Based on the understanding of health law above, the authors draw the conclusion that health law is a series of knowledge, principles, legal rules that contain legal protection, services and law enforcement against medical/health actions carried out by parties who work as health workers. (Marbun, 2019).

LITERATURE REVIEW

The right to health is universally recognized as such by all countries, including Indonesia. Article 25 paragraph (1) of the United Nations Declaration of Human Rights from 1948 makes this acknowledgment clear.:

"Everyone is entitled to security in the event of unemployment, illness, disability, widowhood, old age, or any other circumstance that results in lack of maintenance but is beyond his control, including the right to food, clothing, housing, health care, and the necessary social services."

Article 28 H, paragraph (1) of the Constitution of 1945 specifies that the provision of health care is one of the people's essential rights, the administration of which must be entrusted to the government:

"It is the right of every person to have material and spiritual well-being, to have a safe and secure place to call home, to be free from want or disease, and to have access to medical care. However, the 1945 Constitution guarantees "every person the right to social security which allows for his full self-development as a dignified human being" (Article 28 H, paragraph 3)".

Article 34, subsection 3, of the Constitution of 1945 further confirms:

" Health care and other public services are the responsibility of the state. "

The absolute happiness of all people, individuals, and social beings is the state's ultimate aim, and the constitution is the very core of making that ideal a

reality. SF Marbun stressed that decent and fair laws are the foundation of every law-based state. Fair law is law that is suitable and satisfies the objective and purpose of every law, including those pertaining to health, while good law is democratic law, which is founded on the desire of the people in line with the people's legal awareness. The Reform of the National Health System (SKN) instituted by the Indonesian government has set a new course for the country's health care system's evolution. It seems that numerous changes will be made if we pay great attention to the new policies and processes emerging from these reforms, with the two most crucial being changes to the health effort sub-system and the health funding sub-system.

The National Social Security is handled by BPJS, which includes BPJS Health and BPJS Employment, as stated in Law Number 24 of 2011 about the Social Security Administering Body (BPJS). The Social Security Administering Body is a statutory body tasked with carrying out the state's obligations in accordance with Article 34, paragraph 2 of the 1945 Constitution, namely:

"Human dignity requires that the state provide a social safety net for all citizens and give those who are marginalized in society the tools they need to succeed. that everyone has the right to social security to be able to meet the basic needs of a decent life and increase their dignity towards the realization of a prosperous, just, and prosperous Indonesian society," which is the philosophical basis for the formation of the legal entity and is forwarded through the Law on the National Social Security System."

The 1945 Constitution of the Republic of Indonesia emphasizes that the principle of social justice demands the government's involvement in social welfare development, making social security in Indonesia synonymous with the notion of a welfare state as outlined in the fifth principle of Pancasila.

It can be said that social security is a protection aimed at prevention, especially for people who have income or not, for the whole community against various risks/events that occur naturally such as illness, accidents, premature death, retirement and old age, with joint funding. between the government and the community with the principle of mutual cooperation in financing these social security programs (Gotama & Pardede, 2010).

Another problem lies in the fact that there are still many BPJS participants refusing to get health insurance services in hospitals, of course this is for the sake of getting their rights as mandated by the 1995 Constitution and other laws and regulations. The lack of optimal service and discriminating between the degrees of BPJS participants has become a real problem. Where the hospital should be a place where health services are held, and is a place where people who are sick seek and receive treatment to cure their illness (Pakpahan & Sihombing, 2018).

The act of refusal in the health sector is known as an act that has violated Law Number 36 of 2009 concerning Health, one of which is that health workers or hospitals are prohibited from rejecting patients who need first aid for any reason, so BPJS patients must get legal protection against health insurance that implemented by BPJS.

The problem with financing public health insurance implemented by BPJS Health is that the quality of service is still not effective and efficient. Mote

believes that health services, especially the public sector, still have many obstacles and obstacles, especially in terms of service quality, while Endang reports that according to a World Bank report out of 157 countries, Indonesia ranks 35th in terms of quality of public services. A service is considered satisfactory if the service can meet the needs and expectations of the community. If people are dissatisfied with a service provided, it indicates that public services in a country are in an ineffective and inefficient state.

The provisions of Article 34 paragraph (2) of the 1945 Constitution emphasize that the state is tasked with developing a social security system for all people and empowering the weak and incapable of society in accordance with human dignity. This provision places the state as a party that has obligations, which must be read systematically with the provisions of Article 28 H paragraph (3) of the 1945 Constitution as previously described.

From the provisions above it can be seen that what is meant by social security is not only related to the issue of health services, it is only one form of social security. Thus the material regulated in the Social Security Law is only part of the implementation of the provisions of Article 34 paragraph (2) of the 1945 Constitution. The social security provisions in the 1945 Constitution are a manifestation of the state's goal of promoting public welfare.

In addition to the BPJS Health insurance problems above, there are also other institutional problems in implementing the SJSN by BPJS. The SJSN Law states that the social security system is implemented by several agencies. The BPJS law does not state that BPJS is the sole provider of social security. However, we can see this if we look at the BPJS Law in a systematic and complete manner (Motes, 2008).

Article 16 of the BPJS Law shows that there is a principle of mandatory membership, so far there is no problem because participation is mandatory for social security programs, not specifically for certain institutions. It becomes a problem when participating or becoming a participant can only be done by registering with BPJS.

Article 17 of the BPJS Law can also be interpreted that a citizen can only participate in the social security program if he is a BPJS participant. If it becomes a public or private insurance program, it means that it has not participated in the mandatory social security program. When a citizen does not become a BPJS participant, the person concerned may be subject to sanctions (Januraga, 2010).

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reason, so BPJS patients must get legal protection against health insurance that implemented by BPJS.

The primary question that motivated this study was: (1) What kind of monopolistic power does Law No. 24 of 2011 regarding the Social Security Administration Agency (BPJS) have over the right to health protection? As for question (2), how exactly is the monopoly right outlined in Law No. 24 of 2011 interpreted?

METHODOLOGY

This is what is called "normative" or "doctrinal" legal research, which is another name for library and document study. Known as doctrinal legal study because it focuses only on legal texts such as statutes and case law. Due to the fact that this kind of research relies heavily on secondary sources found in libraries, it is often referred to by these names (Suratman & Dillah, 2013).

Regarding this study's reliance on a legal framework. Legal analysis is used to statutes that, despite attempts at standardization, either fail to address a problem area or actively encourage illegal behavior.(Susanti & Efendi, 2022).

Research sources in the field of law may be broken down into two categories, main legal resources and secondary legal materials, as stated by Peter Mahmud Marzuki (Marzuki, 2016). Primary legal resources include legislation, official documents, or treatises used by legislators and judges. The key legal sources for this analysis are:

1. The 1945 Constitution of the Republic of Indonesia
2. National Social Security System Law
3. Law on the Social Security Administering Body

All non-official publications in the field of law are considered secondary sources. Textbooks, dictionaries, journals, and commentary on judicial judgments are all examples of legal publications. Tertiary legal resources, such as bibliographies and cumulative indexes, compile and organize data from primary and secondary legal resources.

RESULTS AND DISCUSSION

In order to sustain and advance human existence, constant demands for a variety of resources must be addressed. One of the basic requirements for a fulfilling existence is adequate health care, both for survival and for personal growth. To achieve a prosperous, fair, and healthy society, development in the health sector must be carried out on a continuous basis with the goal of increasing awareness, willingness, and the ability to live a healthy life for everyone (Hafifah & Abidin, 2020).

Several relevant theories, including the theory of distributive justice, the theory of human rights, and the idea of universal health care, may be linked together to provide a conceptual analysis of the right to health in the Indonesian Constitution.

1. Distributive Justice Theory

Distributive justice theory focuses on the fair and equitable distribution of resources among individuals in society(Donnelly, 2003). In the context of the right to health, Article 34 Paragraph (3) of the 1945 Constitution

reflects the principle of distributive justice by mandating the state to develop an inclusive and universal social security system that empowers the weak and underprivileged. Therefore, the health system in Indonesia must be based on the principles of distributive justice to ensure equal and fair access to health services for all people.(Soejoeti & Susanti, 2020).

2. Human Rights Theory

Human rights theory emphasizes that every individual has inherent and inalienable rights, including the right to health(Budiarsih, 2021). Article 28H Paragraph (1) of the 1945 Constitution reflects this principle by recognizing the right to health as one of the human rights that must be guaranteed by the state. This principle is in line with the values recognized in the United Nations Universal Declaration of Human Rights.

3. Universal Health Coverage Theory

Universal health coverage (UHC) theory refers to a situation where everyone has equal and fair access to quality health services without experiencing financial difficulties. Article 34 Paragraph (3) of the 1945 Constitution confirms the state's commitment to creating an inclusive and universal health system, in line with UHC principles. This reflects the importance of UHC in maintaining public health and well-being.

In order to provide for the necessities of public health, the National Health Insurance (JKN) is part of the National Social Security System (SJSN) and is administered via a compulsory social health insurance mechanism based on Law Number 24 of 2011 addressing SJSN. which is sent to everybody who has contributed to the fund or had their payments made on their behalf by the government (Donnelly, 2003).

Social insurance and the pursuit of equality inform the design of the national health care system. The purpose is to provide access to health care and financial security for essential medical services. Mandatory and nondiscriminatory membership is central to the concept of social insurance; in the case of organized groups, the cost of payments based on earnings is borne jointly by the business and the employee. Health care that is all-encompassing, covering promotive, preventative, curative, rehabilitative, and disposable drug and medical material use in order to ensure cooperation between the wealthy and the poor, those with a high risk of illness and those with a low risk of illness, the young and the old. The purpose of health insurance is to help policyholders pay for medical treatment (Kertonegoro, 2019).

The National Social Security is handled by BPJS, which includes BPJS Health and BPJS Employment, as stated in Law Number 24 of 2011 about the Social Security Administering Body (BPJS). As much as possible, the purpose of social security is to protect individuals from risks or events that could result in a significant reduction or loss of income, and it also includes the provision of medical services and/or financial guarantees against the economic consequences of the event, as well as guarantees for family and child benefits. In a nutshell, social security is a safety net that ensures everyone has access to the resources they need to meet their most fundamental requirements(Princess, 2014):

1. The program is organized by BPJS Health, with the program being Health Insurance which is effective from 1 January 2014.
2. The program organized by BPJS Ketenagakerjaan, with programs namely Work Accident Insurance, Old Age Security, Pension Insurance, and Death Benefits, is planned to start from 1 July 2015.

The Health Insurance Governing Body (BPJS) is a government agency responsible for overseeing the country's national health care system. Four (four) state-owned businesses—PT TASPEN, PT JAMSOSTEK, PT ASABRI, and PT ASKES—have been combined to form the Social Security Administrative Body. Insurance in form, the Social Security Organizing Body will eventually mandate participation from all residents of Indonesia. There are two types of BPJS participants: those with more resources and those with less resources. According to Article 2 of Law No. 24 of 2011 pertaining to the BPJS, the BPJS is responsible for coordinating the nation's social security system in accordance with the values of humanity, benefit, and social justice for all Indonesians. Article 2 of Law No. 24 of 2011 pertaining to the BPJS (Social Security Administering Body) is explained as follows.

1. What is meant by "humanitarian principles" are principles related to respect for human dignity.
2. What is meant by "principle of benefit" is an operational principle describing efficient and effective management.
3. What is meant by "the principle of social justice for all Indonesian people" is the principle of being just.

Article 3 of 2011's Law No. 24 Relating to the Agency The Social Security Administration (BPJS) makes it clear that its ultimate goal is to ensure that every Participant and/or their family has enough money to live a comfortable existence. For the sake of achieving social welfare for all Indonesians, the term "basic needs of life" refers to the necessities that everyone must have in order to lead a decent life, as defined in Article 3 of Law Number 24 of 2011 about Social Security Administering Bodies.

In 2014, the Social Security Administration Agency (BPJS) was established to oversee the administration of social security programs in accordance with the requirements of the BPJS Law. The purpose of creating BPJS was to enhance the quality of services provided and the number of people who are covered by social safety nets.

For eligible members, BPJS administers a suite of social insurance programs including National Health Insurance (JKN), Work Accident Insurance (JKK), Death Insurance (JKM), and Pension Insurance (JP) (UU BPJS, 2011). The number of Indonesians enrolled in social security programs has skyrocketed since the BPJS Law was passed.

However, the BPJS Law's implementation faces a number of obstacles, including budgetary concerns for the social security program's funding, regional variations in service quality, and BPJS administration issues. Improved administration and efficiency in managing money and increased control of the

BPJS's performance are only two examples of the changes implemented by the Indonesian government to ensure the long-term viability of the country's social security program.

The BPJS Law was enacted with the goal of guaranteeing all Indonesians some kind of social security. In order to realize fair and equitable social welfare for all Indonesians, the BPJS Law explains that every person has the right to receive social security.

Social security programs organized by the BPJS, such as the National Health Insurance (JKN) and Work Accident Insurance (JKK), are a form of social protection provided to participants to protect them from health risks and work accidents.

In addition, BPJS also provides social protection insurance through the Death Insurance (JKM) and Pension Insurance (JP) programs for participants who meet the requirements. The JKM program provides compensation for the heirs of participants who pass away, while the JP program provides pension insurance for participants who have reached the retirement age limit.

Law No. 24 of 2011 concerning the Social Security Administrative Body (BPJS) has the main objective of creating an integrated, inclusive and sustainable social security system that includes health insurance, employment insurance, and work accident and death insurance (UU BPJS, 2011). The concept of protection in the BPJS Law is to provide social protection guarantees to all Indonesian people. In the BPJS Law, it is explained that every Indonesian citizen has the right to get social security as a form of social protection and certainty in the framework of realizing equitable and fair social welfare.

Although the BPJS Law aims to create an integrated, inclusive and sustainable social security system, its implementation is faced with several problems. The main problem is related to finance related to the financing of social security programs. The social security system organized by the BPJS requires substantial funding to be able to provide social protection to all participants. However, financing obtained from contributions from participants and the government is still limited, so that BPJS often experiences financial deficits in maintaining the health and welfare of the community.

The issue of the right to health in Indonesia covers several main issues, such as unequal access to health services, varying quality of health services, health financing that is not yet optimal, and disparities between urban and rural areas.

1. Unequal access to health services

Even though UHC is the main goal of the Indonesian health system, access to health services is still uneven in various regions. Several factors contribute to this inequality, including the availability of health facilities, health workers, and infrastructure in various regions. Particularly in rural and remote areas, people often face difficulties in obtaining adequate health services.

2. The quality of health services varies

The quality of health services in Indonesia varies between different health facilities and between regions. This can lead to inequalities in health

outcomes and affect the fulfillment of people's right to health. Improving the quality of health services is necessary to ensure that every citizen has access to effective and safe care.

3. Health financing that has not been optimal

Although the government has increased investment in the health sector, health financing in Indonesia is still not optimal. Limited health budgets can affect the quality and access to health services, as well as the government's ability to achieve UHC. In addition, most health expenditures come from direct payments by communities, which can affect their ability to access the care they need.

4. Gap between urban and rural areas: The gap between urban and rural areas in terms of access and quality of health services is a major challenge in fulfilling the right to health in Indonesia. Factors such as the unequal distribution of health facilities, a shortage of health workers in rural areas, and inadequate infrastructure in these areas, contribute to this gap.

From a conceptual perspective, the issue of the right to health in Indonesia illustrates the importance of addressing inequalities in access and quality of health services, as well as increasing health financing. Reconception of health protection in Law no. 24 of 2011 concerning the Social Security Administration Agency (BPJS) is an effort by the Indonesian government to achieve constitutional health protection and strengthen the right to health for all people. This law creates a national social security system that includes health services for all citizens, with the main objective of achieving universal health coverage (UHC).

Based on the analysis of the problems and solutions discussed earlier, it can be concluded that the implementation of Law no. 24 of 2011 concerning the Social Security Administrative Body has several problems related to public health protection. However, by adopting the right solution, these problems can be overcome and the national health insurance program can run more effectively and efficiently.

In terms of increasing equitable access, it is important to encourage the development of health facilities in remote areas as well as increase the number of available health workers. Meanwhile, to improve the quality of health services, it is necessary to apply high quality standards and supervise and train health workers. To overcome the problem of late claim payments and high administrative burdens, it is necessary to simplify the claim administration process and adopt a more sophisticated information system. Meanwhile, to overcome the problem of lack of supervision and enforcement of health service quality standards, it is necessary to increase supervision and quality control as well as law enforcement against violations that occur.

Finally, to overcome the problem that not all poor and vulnerable people are enrolled in the national health insurance program, it is necessary to carry out more intensive outreach and education as well as more accurate and inclusive data collection. Through these efforts, it is hoped that the national health insurance program can achieve its goal of providing equal health protection for all Indonesian people (Halim Sukur et al., 2020).

Based on that regarding Law No. 24 of 2011 reveals several challenges in achieving constitutional health protection, such as:

1. Increasing equitable access: BPJS Kesehatan needs to work with local governments and other partners to expand the reach of health facilities, especially in rural and remote areas, as well as increase the number of available health workers.
2. Improving the quality of health services: BPJS Kesehatan must ensure that health facilities that cooperate with the national health insurance program meet high quality standards and provide effective and safe services.
3. Optimization of health financing
The government needs to increase the allocation of the health budget to ensure adequate financing to achieve UHC. In addition, there needs to be coordination between the central government, regional governments, and BPJS Kesehatan in managing the health insurance program funds.
4. Simplification of administrative processes
BPJS Kesehatan must improve the administrative and bureaucratic processes related to the health insurance program, such as registration, claims and payment processes, to make them more efficient and easily accessible to the public.
5. Development of information systems and technology
Improvements in information and technology systems will make it easier to manage participant data, billing and payments, as well as facilitate coordination between BPJS Kesehatan, health facilities and the government.
6. Community outreach and education
BPJS Health must actively educate the public about the benefits of the national health insurance program, as well as the importance of active participation in this program.
7. Evaluation and monitoring
The government needs to periodically evaluate the implementation of Law no. 24 of 2011, as well as increasing supervision and law enforcement against violations that occur in the implementation of the health insurance program.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

1. The monopoly right to health protection granted to the Social Security Administration Agency (BPJS) in Law no. 24 of 2011 concerning BPJS is a step taken to organize a health insurance program effectively and efficiently. This health protection monopoly right has benefits, including increasing public access to health services, controlling costs, and improving the quality of services through negotiations with health service providers. However, there are also criticisms of this monopoly right, such as the lack of choices for health insurance participants and the potential for inhibiting innovation in the delivery of health services.

2. Coordinated and integrated efforts are needed between the government, BPJS Health, health service providers, and the public to ensure that the national health insurance program can run more effectively and efficiently. The government needs to increase the budget allocation for health and ensure efficient use of funds, as well as seek alternative funding sources, such as cooperation with the private sector or international donors. With these efforts, it is hoped that the national health insurance program can provide equal and quality health protection for all Indonesian people.

Recommendations

1. To address these criticisms, the government could take steps such as strictly monitoring and regulating the performance of the BPJS, strengthening regulations to encourage fair competition, and increasing cooperation between the BPJS and related parties, including private hospitals and clinics. Other efforts include increasing access to information, availability of health facilities, and availability of qualified health workers throughout Indonesia.
2. BPJS Kesehatan needs to improve its information and technology systems to facilitate the management of participant data and to coordinate with local governments in the data collection process, so as to ensure that all people are registered and their rights to health are guaranteed. This can also help increase public confidence in the national health insurance program.

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