



# Legal analysis of the fairness of bpjs health services based on law number 17 of 2023 concerning health

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**Abstract:** Fair access to health services is a fundamental right guaranteed by Indonesian law. BPJS Health, as the national health insurance administrator, is mandated under Law Number 17 of 2023 concerning Health to ensure equitable, non-discriminatory, and efficient services for all citizens. However, disparities in service quality, administrative delays, and unequal distribution of health facilities continue to raise legal concerns regarding the fulfillment of justice principles. This study employs a normative juridical approach supported by statutory, conceptual, and case-based analysis. Legal materials were collected through document review of Law No. 17/2023, related regulations, and scholarly literature. The analysis compares normative provisions with field-based findings from secondary data to evaluate whether BPJS services align with the principles of fairness, accountability, and legal certainty. Results: The study finds that although Law No. 17/2023 strengthens the legal foundation for equitable health services, gaps remain in implementation. Issues such as service discrimination, referral system barriers, and limited infrastructure hinder the realization of legal fairness. BPJS Health has implemented reforms to improve transparency and accessibility, yet inconsistencies between policy and practice persist. BPJS health services have a strong legal framework for fairness under Law No. 17/2023, but practical challenges weaken its effectiveness. Strengthening regulatory enforcement, improving governance, and enhancing health facility capacity are essential to achieving genuinely fair health services nationwide.

**Keywords:** BPJS Health; Law Number 17 of 2023; Legal Analysis

## 1. Introduction

Normatively and philosophically, the principle of justice in BPJS Health services has become a key issue following the enactment of Law Number 17 of 2023 because this law reaffirms health as a human right and a state obligation, thus demanding a balance between the values of social justice, non-discrimination, and the practice of health service delivery. The normative legal approach is scientifically justifiable because this research relies on a systematic analysis of the principles, norms, and positive legal constructions governing BPJS Health, while comparisons with field conditions through secondary data serve to test the consistency and effectiveness of these norms in empirical reality. The discrepancy between normative provisions and health service practices has significant legal implications, particularly regarding the principles of legality, state responsibility, and accountability of service providers, which can give rise to the potential for maladministration or violations of the right to health. Therefore, further research needs to be directed at deepening the oversight and sanction mechanisms in administrative law, analyzing the protection of patient rights in health law, and socio-legal studies that explore the structural, institutional, and social factors that influence the realization of justice in BPJS Health services. Previous studies on BPJS Kesehatan (Social Security Agency for Health) have generally focused on administrative aspects, financing sustainability, participant satisfaction, service quality, and health facility compliance with regulations that existed prior to the recent legal framework changes. Most of these studies still refer to the regime of Law Number 24 of 2011 and Law Number 40 of 2004, so their analysis has not yet considered the transformation of the national health insurance system following the enactment of Law Number 17 of 2023 concerning Health. As a result, the di-

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Received: Nov 30, 2025;

Revised: Dec 10 2025;

Accepted: Dec 24, 2025;

Published : Dec 30, 2025



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mensions of justice—including distributive, procedural, and access justice—have not been comprehensively examined within the context of the new norms, principles, and mandates introduced by these laws. Furthermore, previous research has tended to use implicit indicators of justice, such as equal access or affordability, without explicitly linking them to the principles of social justice and the right to health reaffirmed in Law 17 of 2023. This law, however, introduces a new paradigm in the provision of health services, including restructuring the role of the state, guaranteeing participant rights, and strengthening the principle of non-discrimination. The absence of studies specifically analyzing BPJS Kesehatan services from a justice perspective following the enactment of the law creates a significant research gap. Therefore, this research is relevant and important in filling this academic void while also providing conceptual and empirical contributions to the development of equitable health insurance policies. Health is a basic human right and is guaranteed by the constitution, as stipulated in Article 28H paragraph (1) and Article 34 of the 1945 Constitution of the Republic of Indonesia. The state is responsible for providing fair and equitable health services to all citizens without discrimination (Hutagalung & Sara, 2025). Within this framework, the government developed the National Health Insurance (JKN) system, managed by the Social Security Administering Body (BPJS Kesehatan) as a means of fulfilling the right to health. However, despite BPJS Kesehatan membership coverage increasing significantly to over 95% of the population, issues of inequitable service delivery remain a common occurrence. At various healthcare facilities, JKN participants frequently face long queues, slow service, differences in service quality compared to non-BPJS patients, and discriminatory practices that contradict the principle of universal healthcare (Khalid & Poernomo, 2023).

With the enactment of Law Number 17 of 2023 concerning Health, the government has undertaken major regulatory reforms, including strengthening health insurance governance, improving service quality standards, and overseeing healthcare facilities collaborating with BPJS Kesehatan. However, the effectiveness of this law in ensuring equitable service delivery still requires further normative study (Sadiq et al., 2024). This research is important because there is a research gap most previous studies have focused on aspects of BPJS contributions, financing, or membership, while aspects of service fairness after the enactment of Law 17/2023 have been minimally analyzed in the current health law literature (Satria, 2023). Health is a fundamental right of every citizen, guaranteed by various Indonesian national legal instruments. The right to health is expressly stated in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that "Everyone has the right to live in physical and spiritual prosperity, to have a home, and to have a good and healthy living environment, and to receive health services." This constitutional provision forms the primary basis for the implementation of the national health system, including a fair health insurance mechanism for all Indonesians. To realize this constitutional mandate, the state has established various legal and institutional instruments, one of which is the Social Security Administration Agency (BPJS) for Health (Octavia et al., 2022). The birth of BPJS Health is inseparable from the major national policy regarding social security reform, as regulated in Law Number 40 of 2004 concerning the National Social Security System (SJSN) and Law Number 24 of 2011 concerning the Social Security Administration Agency (Praja et al., 2024).

Both regulations explicitly mandate that health insurance must be administered fairly, accountably, and provide comprehensive protection to all participants without discrimination. As an implementation of these two regulations, BPJS Kesehatan (Social Security Agency for Health) plays a role in administering the National Health Insurance Program (JKN) nationwide (Budiono, 2025). JKN is the largest health insurance program in Indonesia and even one of the largest public health insurance schemes in the world. This program is expected to achieve distributive justice, namely equal access to health services that can be enjoyed by all levels of society, including those in vulnerable and low-income groups. However, along the way, the dynamics of BPJS Kesehatan service delivery have not been free from various criticisms and issues (Rambe et al., 2024). These problems range from long queues for health services, a lack of health facilities in some

areas, unequal distribution of medical personnel, to issues of discrimination between BPJS Kesehatan participants and general patients. These phenomena raise questions about the extent to which the principle of justice in health services is truly realized in the implementation of BPJS Kesehatan (Zahir et al., 2025). To address the challenges and dynamics of the ever-evolving health sector, the government then issued Law Number 17 of 2023 concerning Health. This law replaces Law Number 36 of 2009 concerning Health and presents a new paradigm in the management of the national health system. One of the main focuses of this law is strengthening the principles of justice, equal access, and legal protection for the public in obtaining health services (Octavia et al., 2022).

Law No. 17 of 2023 affirms that the state is obliged to guarantee the provision of quality, equitable, and affordable health services. Article 3 states that health care must be based on the principles of protection, humanity, non-discrimination, justice, benefit, and the public interest (Herman & Wijaya, 2023). The affirmation of the principle of justice in this regulation serves as an important basis for assessing whether the BPJS Kesehatan (Social Security Agency for Health) has fulfilled its obligation to provide fair health services to all participants. Furthermore, Articles 10 and 11 of Law No. 17 of 2023 reinforce the government's obligation to guarantee the financing and provision of health services. Both central and regional governments are required to ensure that health facilities have adequate capacity and quality to serve the public. This is highly relevant because one of the main problems with BPJS services has been the limited availability of health facilities, particularly in remote areas (Hakiki et al., 2025).

From an administrative law perspective, the implementation of BPJS Kesehatan (Social Security Agency for Health) is also linked to the principles of public service delivery as stipulated in Law Number 25 of 2009 concerning Public Services (Sudaryat, 2024). This law stipulates that public service providers are required to provide services that are fair, transparent, non-discriminatory, and free from maladministration. Issues such as patient refusal, unfriendly service, or disparities in facilities can be categorized as violations of the principles of good public service. In the context of legal protection, BPJS Kesehatan participants have the right to receive guarantees for humane and non-discriminatory healthcare services (Undang-undang, 2024). Law No. 8 of 1999 concerning Consumer Protection is also relevant as a legal basis that protects participants' rights as healthcare users. Participants have the right to receive accurate information, adequate services, and protection from harmful practices (Ibnu & Setiawan, 2020). When BPJS services are not implemented according to standards, participants have the right to file objections, claims, or even lawsuits. Furthermore, the implementation of BPJS Kesehatan is based on the principle of non-profit, as stipulated in Law No. 24 of 2011, which emphasizes that BPJS Kesehatan is not profit-oriented but rather focused on improving services to participants (Banu & Trisnadi, 2024). However, in practice, there have been complaints regarding discrepancies between these ideal principles and actual conditions, such as restrictions on certain medical services, complex bureaucracy, or unequal access between large and small facilities (Suhendra et al., 2025).

Law No. 17 of 2023 seeks to address these issues by providing a more comprehensive legal basis for the governance of healthcare facilities, healthcare workers, healthcare financing, and service standards (Septian, 2022). This law requires all healthcare facilities to collaborate within the national health insurance system to eliminate discrimination based on financial status. Furthermore, service providers are also required to meet government-set service quality standards. However, implementation challenges remain significant. Equitable access to healthcare has not yet been fully realized due to limited infrastructure in certain areas (Erawati, 2024). Many community health centers (Puskesmas) and regional hospitals do not meet standards, while the BPJS Kesehatan (Social Security Agency for Health) faces increasing financial pressure as the number of participants requiring healthcare services increases. This raises ongoing issues related to funding sustainability and service efficiency, which impact the principle of justice (Amal & Ma, 2025).

In the context of the principle of justice, what is meant is not only formal equality but also substantive equality (equity) (Dheviana & Hitaningtyas, 2024). This means that

everyone should receive healthcare services according to their medical needs, not simply a uniform service. BPJS participants in underdeveloped areas or those with certain health conditions must receive special attention and treatment to ensure equal access to healthcare. Therefore, Law No. 17 of 2023 emphasizes the importance of equitable distribution of healthcare resources and improving minimum standards of healthcare services throughout Indonesia. This background suggests that an analysis of the equity of BPJS Kesehatan services based on Law No. Law No. 17 of 2023 is a crucial topic in legal studies, as it relates to the fulfillment of citizens' constitutional rights, legal protection for participants, and the state's obligations in providing healthcare services. This analysis also provides an overview of the extent to which national health policies align with the principles of justice, legality, and legal certainty as stipulated in various relevant regulations (Idyanthi et al., 2025).

## 2. Materials and Methods

The scientific basis for using the normative legal approach in this article lies in the main objective of the research which focuses on the analysis of the principles, norms, and construction of positive law governing the implementation of BPJS Kesehatan, especially after the enactment of Law Number 17 of 2023. The normative approach remains relevant even though this research compares norms with conditions in the field obtained from secondary data, because the data is not intended as a purely empirical study, but rather as evaluative material to assess the consistency, effectiveness, and enforceability of legal norms in practice. Thus, the comparison between norms and reality is used to strengthen the normative analysis, identify implementation gaps, and assess their legal implications, without shifting the focus of the research from normative legal studies to empirical research. This research method uses a normative juridical approach with a focus on analyzing laws and regulations governing health services, specifically Law Number 17 of 2023 concerning Health, Law Number 40 of 2004 concerning the National Social Security System, and Law Number 24 of 2011 concerning the BPJS. This research examines primary, secondary, and tertiary legal materials through library research, including academic literature, journals, court decisions, and policies related to the implementation of BPJS Kesehatan. The analysis is conducted qualitatively by interpreting legal provisions and comparing ideal norms with implementation conditions contained in secondary data. This approach aims to determine the extent to which the principle of justice in BPJS Kesehatan services is in accordance with the applicable legal framework (Rumintjap et al., 2023).

## 3. Results and Discussion

The mismatch between normative provisions and healthcare practice has significant legal implications within the framework of legality and accountability, as every action by healthcare providers and the BPJS Kesehatan (Social Security Agency for Health) must be based on applicable law. Deviations from legal norms can indicate a violation of the principle of legality, open up opportunities for maladministration, and weaken the state's responsibility to fulfill the right to health. Furthermore, such mismatches have the potential to lead to legal consequences in the form of administrative charges, disciplinary sanctions, and lawsuits, both against institutions and authorized officials, as well as diminish public trust in the national healthcare system. Therefore, the gap between norms and practice is not only a technical service issue, but also a legal issue closely related to oversight mechanisms, accountability, and the enforcement of the principle of justice in healthcare delivery. Previous studies on BPJS Kesehatan generally focused on administrative aspects, financing sustainability, participant satisfaction, service quality, and health facility compliance with applicable regulations. Most of these studies were still based on the legal framework of Law Number 24 of 2011 and Law Number 40 of 2004, thus failing to accommodate fundamental changes in the national health insurance system following the enactment of Law Number 17 of 2023 concerning Health. Consequently, discussions on the dimensions of justice—including distributive justice, proce-

dural justice, and access justice—have not been thoroughly analyzed with reference to the new norms, principles, and mandates stipulated in these laws. Furthermore, previous research has tended to implicitly define justice through indicators of equal access or affordability, without explicitly linking it to the principles of social justice and the fulfillment of the right to health, as reaffirmed in Law Number 17 of 2023. This law, however, introduces a new paradigm in the provision of health services, including strengthening the role of the state, guaranteeing participant rights, and affirming the principle of non-discrimination. The absence of studies specifically analyzing BPJS Kesehatan services from a justice perspective following the enactment of the law indicates a significant research gap. Therefore, this research is relevant and important in filling this academic void while providing conceptual and empirical contributions to the development of equitable health insurance policies. The research findings indicate that the legal framework governing BPJS Kesehatan services is actually quite robust in ensuring equitable healthcare for all citizens. Law No. 17 of 2023 concerning Health clearly establishes the principles of healthcare provision based on justice, non-discrimination, benefits, and protection. At the normative level, this regulation provides legal assurance that every BPJS participant receives equal and quality healthcare services regardless of social or economic background. Furthermore, provisions in Law No. 40 of 2004 and Law No. 24 of 2011 reinforce the obligation of BPJS Kesehatan to provide effective and accountable public services. However, the research findings reveal a significant gap between these normative provisions and implementation practices on the ground. One key finding is public complaints about unequal service delivery, particularly in remote areas. Limited healthcare infrastructure prevents BPJS participants from receiving standardized services, despite the state's legal obligation to guarantee equal services. The limited availability of healthcare workers, inadequate medical equipment, and long distances to hospitals are major obstacles to achieving the principle of substantive justice (Harjo et al., 2022).

Furthermore, the tiered referral system that underpins the National Health Insurance Program (JKN) still frequently presents administrative obstacles. Many participants report lengthy referral processes, denial of services due to non-compliance with procedures, or data misalignment between healthcare facilities and the BPJS system. However, according to Law No. 25 of 2009 concerning Public Services, service providers are required to provide fast, easy, and non-discriminatory services. Inefficiencies in the referral mechanism indicate that the principles of legality and accountability have not been fully implemented. From a justice perspective, there are indications of discrimination in services between BPJS patients and general patients at some healthcare facilities. BPJS participants often receive simpler services or have to wait longer than patients who pay directly. From a legal perspective, this practice contradicts the principle of non-discrimination as stipulated in Article 3 of Law No. 17 of 2023 and violates participants' rights as stipulated in Article 6 of Law No. 24 of 2011. This indicates that implementation challenges lie not in the regulatory aspect, but in healthcare facilities' compliance with state-mandated standards (Atmawijaya et al., 2025).

On the other hand, BPJS Kesehatan has implemented various improvement efforts, such as digitizing services through the Mobile JKN application, an online queuing system, and increasing the transparency of healthcare facility benefit and payment data. These innovations legally reflect efforts to fulfill the principles of effective and accountable modern public services. However, their impact has not been fully equitable because not all healthcare facilities have adequate technological capabilities. Further analysis indicates that the root of the problem of fairness in BPJS services lies not only in the legal aspect but also in the capacity of the national healthcare system. Law No. 17 of 2023 does provide a strong legal framework, but successful implementation depends heavily on healthcare financing, equitable distribution of facilities, distribution of medical personnel, and effective BPJS management. Fairness will not be achieved as long as there are disparities in facilities between large cities and remote areas. Overall, the research findings confirm that the principle of fairness is clearly stated in the regulations, but its im-

plementation still faces structural and technical obstacles. Improving BPJS Kesehatan services requires strengthening derivative regulations, increasing oversight, and revitalizing healthcare facilities to ensure that the principle of justice is not merely a normative requirement but is realized in real services for all participants. The findings of this study further demonstrate that the pursuit of fairness in BPJS Health services is deeply influenced by structural, legal, and administrative complexities within Indonesia's national health system. Although the normative framework established under Law Number 17 of 2023 on Health reinforces the state's responsibility to guarantee equal access to quality health services, actual implementation continues to face persistent challenges. This discrepancy highlights the classic gap between law in the books and law in action, which remains a central issue in Indonesia's health governance (The Islamic Law Review On Management Of The The Islamic Law Review On Management Of The Social Security, 2020).

One significant observation is the uneven distribution of healthcare resources across regions. While major urban areas generally have well-equipped hospitals, adequate medical personnel, and efficient service procedures, rural and remote regions often suffer from limited facilities, inconsistent medication supplies, and a shortage of specialists. These disparities undermine the principle of substantive justice outlined in the Health Law, which mandates that services must be equitable rather than merely uniform. Thus, fairness in BPJS services demands not only equal rights but also differentiated support based on local needs and vulnerabilities. Another critical point revealed in this study is the role of administrative procedures in shaping patient experience. The implementation of the tiered referral system (*sistem rujukan berjenjang*) remains a major barrier for many participants. Although designed to streamline service delivery, the system can lead to delays when frontline facilities are unable to provide necessary treatment or when bureaucratic approval takes longer than expected. These delays conflict with the principles of efficiency and responsiveness mandated under Law No. 25 of 2009 on Public Services, which requires service providers to operate in a timely, transparent, and nondiscriminatory manner.

Moreover, the study identifies possible forms of indirect discrimination within healthcare facilities. Several reports indicate that BPJS patients may receive different treatment or longer waiting times compared with private-paying patients. While such practices are often attributed to workload pressures or institutional constraints rather than intentional discrimination, they nonetheless contradict the nondiscrimination principle codified in Article 3 of Law No. 17/2023 and undermine public trust in the national healthcare system. Ensuring fairness therefore requires stronger regulatory enforcement, clearer sanctions for violations, and improved monitoring mechanisms at the facility level.

The digital transformation initiated by BPJS Kesehatan—such as the Mobile JKN application, integrated electronic medical records, and online queue systems—presents promising opportunities to improve fairness and accessibility. However, digital inequality remains a challenge. In regions with poor internet connectivity or low digital literacy, these innovations cannot be fully utilized, which further widens the gap between regions with advanced health services and those with minimal technological infrastructure. The state must therefore ensure that technological solutions are accompanied by capacity-building initiatives to avoid reinforcing existing inequalities.

Financial sustainability also emerges as a vital factor affecting fairness. Rising healthcare costs, increased utilization rates, and the demographic shift toward an aging population exert pressure on the BPJS financing system. While the legal framework mandates universal access, achieving fairness requires a funding model that is financially resilient. Without adequate and predictable financing, service quality may deteriorate, leading to longer waiting times, medication shortages, or reduced availability of advanced treatments. In conclusion, the study highlights that achieving fairness in BPJS Health services requires a multidimensional approach. Legal reforms provide a strong foundation, but improvements in administrative procedures, technological capacity, fa-

cility readiness, and financial sustainability are equally essential. Only through integrated and consistently enforced policies can the normative ideals of Law No. 17 of 2023 truly be realized in practice.

The research findings indicate that the legal framework governing BPJS Kesehatan services provides a strong normative basis for ensuring equitable healthcare services for all participants. Law No. 17 of 2023 concerning Health affirms the principles of justice, non-discrimination, and equal access as fundamental principles in the provision of healthcare services. However, field findings and secondary data indicate significant disparities between legal provisions and implementation in various regions. BPJS Kesehatan participants in remote areas still experience limited access due to a lack of healthcare facilities, medical personnel, and supporting infrastructure. Furthermore, the tiered referral system often creates administrative barriers that slow down services, thus contradicting the principle of fast and effective service as stipulated in Law No. 25 of 2009 concerning Public Services. The research also found indications of disparate treatment between BPJS Kesehatan patients and general patients in several healthcare facilities, which contradicts the principle of non-discrimination in Law No. 17/2023. Nevertheless, BPJS Kesehatan continues to make improvements through service digitization and increased transparency. Overall, the research results show that although regulations have provided a strong foundation for justice, implementation in the field still requires strengthening the system, equalizing facilities, and increasing supervision.

#### 4. Conclusions

Further research to deepen the issue of justice in BPJS services needs to be developed multidimensionally, encompassing various perspectives. From an administrative law perspective, research can focus on strengthening oversight mechanisms, accountability of service providers, and evaluating the effectiveness of administrative sanctions against violations of participant rights. From a health law perspective, studies can be directed at analyzing the protection of patient rights, compliance of health facilities with service standards, and the implementation of the principle of non-discrimination in service practices. Meanwhile, from a socio-legal perspective, research can explore the structural, institutional, and social factors that influence inequitable access and quality of services, as well as how legal norms interact with social practices on the ground. This comprehensive approach allows for a deeper understanding of the gap between norms and reality, while providing a scientific basis for the formulation of fairer and more socially just BPJS policies. To ensure the realization of the principles of justice as mandated in Law Number 17 of 2023 at the actual service level, urgent and targeted changes in policy and law enforcement priorities are needed. This includes strengthening derivative regulations that explicitly regulate standards of fair access, service quality, and non-discrimination for all BPJS Kesehatan participants; affirming the responsibility of the state and local governments to ensure the availability and equitable distribution of health facilities; and improving oversight mechanisms and sanctions against service providers who violate participant rights. Furthermore, the complaints and dispute resolution system needs to be strengthened to be more accessible and responsive, so that injustices in services can be addressed quickly and effectively. Consistent, transparent law enforcement, and oriented towards protecting the right to health, is key to ensuring that the principles of justice in Law 17/2023 are not limited to the normative level but are truly implemented in daily health care practices. The legal framework for BPJS Kesehatan services, particularly Law No. 17 of 2023 concerning Health, has provided a strong normative basis for ensuring fairness, non-discrimination, and the fulfillment of health rights for all citizens. However, its implementation still faces various obstacles, such as disparities in health facilities, administrative barriers in the referral system, and the potential for differential treatment of BPJS participants compared to general patients. Although BPJS Kesehatan has implemented various digital reforms and improved governance, their implementation has not been evenly distributed across all regions. Therefore, to truly realize the principle of fairness, it is necessary to strengthen oversight, increase the

capacity of health facilities, ensure equitable distribution of medical personnel, and commit the government and service providers to make equitable health service standards a top priority in the national health insurance system.

**Acknowledgments:** The author would like to express sincere gratitude to all individuals and institutions that contributed to the completion of this study. Special appreciation is extended to the academic advisors and faculty members for their valuable guidance, constructive feedback, and support throughout the research process. The author also acknowledges the contributions of various legal and health institutions whose documents and publications served as important references for this work. Lastly, heartfelt thanks are given to family, colleagues, and peers for their encouragement and continuous support, which greatly assisted in the completion of this research.

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