

# Legal Analysis and Health Insurance System in Indonesia

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## ABSTRACT

This research was conducted to find out how the legal urgency analysis and health financing system in Indonesia are. What are the procedures and challenges of the health financing system through BPJS in Indonesia? The method used in this study is normative research, namely studying various legal regulations or laws that are appropriate, while analysis is carried out through literature reviews of various relevant journals to find new hypotheses and new recommendations. The results of this study found that the urgency of legal regulation and the financing system and health insurance is a basic right as the human rights concept ratified by Indonesia as a form of welfare state. That fulfillment of the right to health through the SJSN system and choosing BPJS as the managing institution. BPJS mechanisms already exist but there are still deficiencies in practice. The National Health Insurance implements a tiered health service system, consisting of First Level Health Facilities and Advanced Referral Level Health Facilities.

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## ABSTRAK

Penelitian ini dilakukan untuk mengetahui bagaimana analisis urgensi hukum dan sistem pembiayaan kesehatan di Indonesia. Bagaimana prosedur dan tantangan sistem pembiayaan kesehatan melalui BPJS di Indonesia. Metode yang digunakan dalam penelitian ini adalah penelitian normatif yaitu mempelajari berbagai peraturan hukum atau undang-undang yang sesuai, sedangkan analisis dilakukan melalui kajian literatur dari berbagai jurnal yang relevan untuk menemukan hipotesis baru dan rekomendasi baru. Hasil penelitian ini menemukan bahwa urgensi pengaturan hukum dan sistem pembiayaan dan asuransi kesehatan merupakan hak dasar sebagai konsep hak asasi manusia yang diratifikasi oleh Indonesia sebagai bentuk negara kesejahteraan. Bahwa pemenuhan hak atas kesehatan melalui sistem SJSN dan memilih BPJS sebagai lembaga pengelola. Mekanisme BPJS sudah ada namun dalam pelaksanaannya masih terdapat kekurangan. Jaminan Kesehatan Nasional menerapkan sistem pelayanan kesehatan berjenjang, yang terdiri dari Fasilitas Kesehatan Tingkat Pertama dan Fasilitas Kesehatan Tingkat Rujukan Lanjutan.

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## I. INTRODUCTION

As we know health is part of the constitutive elements as well as basic human rights (citizens) that must be protected, fulfilled, and facilitated. A healthy society will become a productive, superior, and competitive advantage in improving its standard of living (Susan 2019).

The concept of health in Article 1 number (1) of Law Number 36 of 2009 concerning Health explains that health is a state of physical, mental, spiritual, and social well-being that enables everyone to

live productively socially, and economically. Seeing this understanding, it is very clear that the notion of being healthy is not just a matter of disease, but has elements that are very comprehensive and must be fulfilled to achieve the true meaning of health. On the other hand, the concept of being healthy is a basic right like other basic rights in the recognized concept of human rights (Ardinata 2020).

Thus, people who are unhealthy will automatically have their right to life reduced, unable to obtain and do proper work, unable to enjoy the rights to associate, assemble, and hold opinions, and unable to receive education for their future. In short, one cannot fully enjoy human life.

The right to health services includes the right to a healthy life and work, the right to health services, and the right to special care for maternal and child health. Article 25 of the Universal Declaration of Human Rights (UDHR) states:

"Everyone has the right to a standard of living adequate to ensure the health and well-being of themselves and their families, including food, clothing, housing, health care, and other necessary social needs. and the right to be guaranteed when unemployed, sick, disabled, widowed, reaching old age or lacking other means of livelihood in circumstances beyond his control".

The guarantee of the right to health services is also covered in Article 12 paragraph (1) of the International Covenant on Economic, Social and Cultural Rights, as stipulated by the UN General Assembly 2200 A. (XXI) dated December 16, 1966, specifically the signatory countries of the agreement which recognize the right of every people to enjoy the highest attainable standard of physical and mental health.

The state's obligation to exercise the right to health care as a human right has an international legal basis in Article 2 paragraph (1) of the Covenant on Economic, Social, and Cultural Rights. Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia states that the protection, promotion, realization, and realization of human rights is the responsibility of the state, especially the government.

The government's obligations are also emphasized in Article 8 of the Human Rights Law Number 39 of 1999 (UU HAM) which stipulates that "Protection, Promotion, Enforcement, and the Realization of Human Rights before everything is the responsibility of the government". Article 14(1) of the Health Law states that the government is responsible for planning, regulating, and administering health efforts that are equitable and affordable to the community.

Article 15 of the Health Law states that the government is responsible for providing the environment, order, and sanitation, both physical and social, for the community to achieve the highest degree of health.

Considering that further based on international recommendations, Indonesia based on Article 28H paragraph (1) of the 1945 Constitution is responsible for the provision of health facilities and services according to their objectives. The theoretical implication of this research is to provide a foundation that the right to public health is a condition in which health is a basic human need that must be met, if we speak in the context of the state then this right must be fulfilled and is the responsibility of a sovereign state. Furthermore, the underlying legal concepts are translated into implementing regulations that are used as guidelines and regulatory frameworks in the selection of healthcare systems in Indonesia. The health system in Indonesia was established to protect public health. This study describes the history of the journey and the problems that exist in the management of the health system, which sometimes do not match the initial objectives of the proposed law.

This condition has had an impact on public health that has not been maximized, and hopes for high-level regulation have not been realized. For example, the reach of health services with

technology acceleration is still limited, meaning that there are still people who have not received and/or have not utilized quality health services with various problems, both financial and health insurance. Of course, this analysis hopes to facilitate understanding again. The basic nature of the concept of health itself is to identify deviations from synchronization deviations in the system, thereby improving the health system in a better direction.

Based on all of the above background descriptions, the focus of this research is How to analyze the urgency of the law and health insurance system in Indonesia. and how to analyze the procedures and challenges of health insurance through BPJS.

## II. RESEARCH METHODS

The research method used in this research is a socio-legal approach by examining various primary and secondary sources in the form of laws and regulations, books, journals, and online sources as sources of information. According to the socio-legal approach, the legal analysis is directly related to the analysis of the social situation in which the law applies and must be placed in the perspective of that situation by looking at the role of law in creating, maintaining, or changing situations. All findings are then analyzed to find new hypotheses and make new recommendations for further research. All findings are then analyzed through several stages where the researcher, after searching for relevant references, carries out a review and uses them as material for consultation with experts in their field after obtaining a fairly significant result, a finding is prepared in the form of a new hypothesis which of course can be concluded to make new recommendations for further research

## III. RESULTS AND DISCUSSION

### 1. Health Urgency through Legal Provisions

As we know health is part of human rights that must be pursued, thus giving the consequence that a country anywhere only agrees and works together to realize these basic rights (Hidayat 2017). This form of agreement can be seen in international conventions and international legal documents, Provisions regarding the right to health are defined as one of the fundamental rights that every individual has, and this right must be respected and fulfilled by the state. regardless of ethnicity, religion, or background. political, economic, and social conditions (Salim 2020). Agreement on "fundamental rights" by the international community since the adoption of the Constitution of the World Health Organization (WHO) in 1946, among others, namely, "Health is a human right that is indispensable for the implementation of other human rights" (Hogerzeil 2006).

This implies that health is placed as a fundamental human right and is invaluable for the implementation of other human rights (Salim 2020). Furthermore, this health is pursued through healthcare efforts, namely, efforts to overcome and prevent health problems such as examination, treatment, and/or care including pregnancy and childbirth (Winarno 2014).

As with the concept of basic rights as a world agreement, this health service effort is also guaranteed by countries in the world which then agree through the following Universal Health Coverage (UHC) recommendations, According to WHO UHC is a health system in which every citizen has fair access to quality promotive, preventive, curative and rehabilitative health services needed at an affordable cost. The scope of UHC contains two core elements, namely: 1).

Access to fair and quality health services for every citizen; and 2). Financial risk protection when citizens use health services. Furthermore, after we agree that health is part of human rights, then there is an obligation for the state through the government to make it happen. Government policy in realizing this concept is a manifestation that the goal of the state is to provide protection and welfare for its citizens (Basuki 2020).

Indonesia is a dynamic legal state (Welfare state, welfare state) that has legal principles, one of which is the principle of implementing public interest. So based on this principle, all government officials are required to carry out activities that lead to the implementation of public interests and can provide legal protection for the community (Setyowati 2022).

As stated in the consideration part of the letter and of the BPJS Law, namely " the national social security system is a state program that aims to provide certainty of social protection and welfare for all people". The consequence of the concept of the Welfare State is that the state is responsible for realizing the welfare of its people, by participating in the affairs of its citizens from birth to death (from the cradle to the grave) so that no party takes sides. the lives of its citizens who are not intervened by the government (Yustina 2015), (Mangkey 2022).

One form of government intervention in people's lives is in the health sector to realize the highest degree of health and this is the responsibility of the government (Tampubolon 2022). The Strategic Plan (Renstra) of the Ministry of Health is an indicative planning document containing health development programs to be implemented by the Ministry of Health and serves as a reference in preparing annual plans. As an illustration, the main target of the 2015-2019 RPJMN (National Medium Term Development Plan), namely: (a) Improving the health and nutritional status of mothers and children; (b) Increasing disease control; (c) Increasing access to and quality of basic and referral health services, especially in remote, underdeveloped, and border areas; (d) Increasing the coverage of universal health services through the Healthy Indonesia card and the quality of SJSN Health management; (e) Meeting the needs of health workers, medicines, and vaccines; as well as, (f) Increased responsiveness of the health system

From these various targets, quite large funds are needed to realize health so that if funds are insufficient, efforts and strategies are needed so that the system can overcome public health problems (Budiarsih 2020). Furthermore, in realizing the basic right to health as recommended by human rights and the concept of a welfare state, the Indonesian government through the foundation of a state also incorporates the concept of basic health that has been mandated by the state, that the state's goal is to improve people's welfare into the basis of the 1945 Constitution (Affandi 2019).

In the Fourth Amendment to the 1945 Constitution of the Republic of Indonesia, this objective was emphasized even more, namely by developing a Social Security System for the Welfare of All the People. This objective is stated in Article 28H of the 1945 Constitution of the Republic of Indonesia: (1) Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to enjoy a good and healthy environment and is entitled to the right to obtain health services; (2) everyone has the right to get facilities and special treatment to obtain the same opportunities and benefits to achieve equality and justice; (3) Everyone has the right to social security which enables his/her complete self-development as a dignified human being.

In addition to Article 28H, Law Number 36 of 2009 concerning Health emphasizes that everyone has the same rights to obtaining access to resources in the health sector and obtaining safe, quality, and affordable health services.

## **2. The Urgency of Health in the Health System in Indonesia**

Furthermore, the right to health is stated in the basic provisions of state law through Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that the state develops a Social Security System for all Indonesian people (Elviandri, Dimiyati, and Absori 2019). This provision provides a mandate for states to follow through by selecting the system used to protect public health rights.

To answer this mandate, the state was present through the formation of Law No. 40 of 2004 SJSN is strong proof that the government and related parties have a big commitment to realizing social

welfare for all people and as a form of social protection. Its essence aims to ensure that everyone can meet the basic needs of a decent life (Salim 2020).

With the SJSN Law, it is hoped that it can provide social protection for all Indonesian people in a comprehensive and integrated manner, therefore the government is responsible for administering public health insurance through the National Health Insurance program which in turn will become JKN (Hergianasari and Hadiwijoyo 2021).

The history of the formation of social security in the health sector includes PT Askes (Persero) which serves, among others, Civil Servants (PNS), retirees, veterans, and private employees. For the poor and underprivileged, the government provides guarantees through Community Health Insurance and Regional Health Insurance schemes. However, the scheme is still fragmented, making it difficult to control health costs and service quality (Purba 2022). Evaluating the health insurance that has been implemented, the government together with the DPR returned it as an effort to improve it through Law Number 40 of 2004 concerning the National Social Security System. This law mandates that social security programs are mandatory for the entire population, including health insurance programs through social security administering bodies (Daming 2020).

Then, to realize the goals of the national social security system, it is necessary to establish an administrative body in the form of a public legal entity based on the principles of cooperation, non-profit, diversity, prudence, accountability, portability, and participation. , mandatory in nature, trust funds, and the results of the management of the Social Security Fund which are distributed entirely for development programs and the benefit of Participants as much as possible (Hennigusnia and Kurniawati n.d.).

The establishment of the Social Security Administrative Body was ratified by Law Number 24 of 2011 concerning the Social Security Administering Body (UU BPJS). This formation is the implementation of the Law on the National Social Security System, after the decision of the Constitutional Court on case Number 007/PUU-III/2005, to provide legal certainty for the formation of BPJS to administer Social Security programs throughout Indonesia.

BPJS was formed as a manifestation of the implementation of Article 5 paragraph (1) and Article 52 of Law Number 40 of 2004 concerning the National Social Security System which mandates the establishment of a Social Security Administering Body and institutional transformation of PT Askes (Persero), PT Jamsostek (Persero), PT TASPEN (Persero), and PT ASABRI (Persero) to become the Social Security Administering Body, hereinafter referred to as BPJS (Khakim, Ansyori, and Agusmidah n.d.).

This transformation was followed by the transfer of participants, programs, assets and liabilities, employees, and rights and obligations. With the enactment of this Law, the BPJS institution which originally consisted of 4 (four) institutions now only consists of 2 (two) divisions, namely Health BPJS and Employment BPJS. BPJS Health organizes health insurance programs and BPJS Employment organizes work accident security, old age security, pension security, and death insurance programs. With the formation of the two BPJS, the range of social security program membership will be expanded in stages. BPJS Health itself began to operate organizing the Health Insurance Program on January 1, 2014 and is an institutional transformation from PT Askes (Persero)(Agusmidah et al. n.d.).

To determine steps to realize the fulfillment of the right to health through JKN which is part of the SJSN, the government enacted Law Number 36 of 2009 concerning the Health Act, Law Number 40 of 2004 concerning the SJSN, and Law Number 24 of 2011 regarding BPJS, as well as various Presidential Regulations concerning Health Insurance that have changed, what is interesting according to the author is Presidential Regulation Number 75 of 2019 concerning Health Insurance, where through Presidential Decree No.75 of 2009 regarding the increase in BPJS premiums listed

in Article 29, Article 30 paragraph (2), Article 32 paragraph (1) and paragraph (2), Article 33 paragraph (1), between Article 34 is inserted 1 (one) article, namely Article 33A, Article 34, and between Article 103 and Article 104 is inserted 1 (one) article, namely Article 103A. Several months after the issuance of the Perpres, the Supreme Court annulled the article governing the increase in BPJS premiums. Then, after the Supreme Court canceled this, the President issued Presidential Regulation Number 64 of 2020 concerning the Second Amendment to Presidential Regulation Number 82 of 2018 concerning Health Insurance (Danastri 2023).

However, apart from these various controversies, the various changes to the Presidential Regulation are certainly aimed at making the health insurance system better and more perfect. However, in reality, these conditions are still often a problem in the health insurance system, especially related to the adequacy of the health financing budget (Trisnantoro 2021).

Whereas then to implement the health insurance system, the state establishes a special institution that is mandated to take care of efforts to improve public health. This body is named BPJS as health insurance that applies to every individual (citizen) without differentiating one citizen from another (Chumaida et al. 2019).

In implementing the national health insurance program, the concept available is social health insurance that covers all levels of society, in this case, all Indonesian people are required to become participants in this program (Hennigusnia and Kurniawati n.d.).

Each participant in the National Health Insurance program determines contributions for participants, in this case, the state divides into two forms of participation, namely Contribution Assistance Recipients (PBI) and Non-Contribution Assistance Recipients (Not PBI). Recipients of Contribution Assistance, include people who are classified as poor and needy whose contributions are borne by the state, while Non Recipients of Contribution Assistance (Not PBI) are Participants who are not classified as poor and poor whose contributions are not borne by the state. Based on this, it can be seen that the state provides different treatment to its citizens in administering health insurance, which should be the state's obligation to fulfill without differentiating one citizen from another.

Law Number 24 of 2011 concerning the Social Security Organizing Agency and BPJS Health began to officially operate on January 1, 2014, therefore BPJS has organized national health insurance for all Indonesian people who can afford it or can't afford it. As we know, the central government's health budget is divided into 4 (four) major groups, namely: (a) The budget that is in the BPJS; (b) The budget is in the Ministry of Health; (c) Budgets that are in various Ministries and Agencies outside the Ministry of Health; And (d) District/City and Provincial government budgets.

Thus the health financing is borne jointly by all participants, so that it is not burdensome on an individual basis, and the Social Security Administering Body is formed (Amri and Iyasi 2021).

### **3. Social Security Administering Body Service Procedures And Challenges**

Procedure The health BPJS service system uses a tiered health service system mechanism, which consists of First Level Health Facilities (FKTP) and Advanced Referral Level Health Facilities (FKRTL). In terms of health financing, the source of financing comes from the government as regulated in Article 171 of Law Number 36 of 2009 concerning Health, which is allocated 5% of the APBN excluding salaries and 10% of the APBD excluding salaries.

In implementing this program, BPJS requires joint efforts with the government to improve the quality and affordability of the community to quality health services and equity in health financing.

The low quality of public services is one of the highlights directed at the government bureaucracy in providing services to the public. Improvement of public services in the era/reform is the hope of all people, but the journey has not experienced significant changes. Various public responses tend to

indicate that various types of public services are experiencing setbacks, which are partly marked by the many irregularities in public services that are slow in providing services, which is also an aspect of public services that is highlighted a lot. In the field of public services, efforts have been made to set public service standards in realizing fast, inexpensive, and transparent public service standards. This is related to the implementation of service systems and procedures that are less effective, convoluted, slow, do not respond to customer interests, and others are a series of negative attributes that are delegated to the bureaucracy.

The implementation of the JKN program has not been optimal and comprehensive for the community due to a lack of socialization regarding the importance of the program held by the government so the community has assumed in advance that the services to be provided will be slow and convoluted so that the community prefers to spend their own money to pay for treatment at some health facilities even prefer not to go to health facilities at all due to factors from the government bureaucracy itself which has not experienced a significant improvement.

#### 4. CONCLUSION

From all the descriptions above, the researcher can conclude that the urgency of legal regulations and the financing system, as well as health insurance, are basic rights and the concept of human rights ratified by Indonesia as a form of welfare state. The right to health is a fundamental right. These individual rights have been expressly stated in Article 28 H and Article 34 of the 1945 Constitution and Law Number 11 of 2005 concerning the Ratification of the International Covenant on Economic, Social and Cultural Rights that everyone has the right to health services and is the responsibility of the state. for the provision of health care facilities. Based on this, Law Number 36 of 2009 concerning Health, Law Number 40 of 2004 concerning the National Social Security System, and Law Number 24 of 2011 concerning Social Security Administering Bodies were formed. and Presidential Regulation Number 82 of 2018 concerning Health Insurance.

BPJS as the appointed body is expected to be able to manage the SJSN mandate. The mechanism in BPJS health services is carried out through a tiered referral mechanism. In practice, there are still challenges such as service quality, information technology that is not yet supported, and health infrastructure that is not evenly distributed, especially for disadvantaged areas. From the results of all these findings, it is hoped that this research can contribute to research for policymakers in the health system that one policy program will not be able to run optimally without being supported by other related policies. However, evaluation needs to be carried out of course as an effort to maximize whether a program is following the purpose of being formed. The researcher realizes that this research cannot be optimal considering the area of the health service system that applies throughout Indonesia which of course has different problems and characteristics in each region. So, it is hoped that in future research the researcher will be allowed to expand the reach and study in an integrated manner.

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