

Implementation of Sanctions for Parties Who Have Not Become Members of the Social Security Implementing Board (BPJS) In Justice Perspective

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Abstract

Health care is a right that belongs to the community and an obligation that must be provided by the state. The government's effort in realizing health services is to establish the National Social Security System (SJSN). One form of SJSN is the national health insurance which is implemented by the Social Security Administering Body (BPJS). Health insurance in its implementation raises legal problems in the form of conflicts of rules. Health as a human right, requires the state to fulfill this right. The community as recipients of rights based on the principle of compulsory participation as regulated by the Law concerning the National Social Security System, is required to become a participant in social security. The result is the imposition of administrative sanctions for those who do not register as members of the BPJS. Even moment this membership Becomes BPJS members will also becomes condition in various public services such as sell buy land, management permission business and so on. The type of research used in this legal research is juridical-normative research. The approach method used is the statutory approach and the conceptual approach. Conclusion from study this is existence penalty to the party who doesn't sign up self as BPJS participants and no fulfillment right the community in public services make the government has violated the rights of its citizens.

Keywords

Health service; rights; by the Social Security Administering Body



I. Introduction

The right to health is related to the right to obtain health services. The right to health services is regulated in the 1945 Constitution of the Republic of Indonesia (UUD 1945). Article 28H paragraph (1) states that "everyone has the right to live in physical and spiritual prosperity, to live and to have a good and healthy living environment and to have the right to obtain health services".

The state's obligation to fulfill the right to health is regulated in the provisions of Article 34 of the 1945 Constitution. Article 34 paragraph (3) of the fourth amendment of the 1945 Constitution stipulates that "the state is responsible for the provision of proper health care facilities and public service facilities". Furthermore, Article 34 paragraph (4) stipulates that "further provisions regarding the implementation of this article are regulated in law". The regulation of the right to health in the 1945 Constitution reflects the commitment of the Indonesian government in regulating and protecting human rights. However, the regulation of the right to health in the 1945 Constitution is general in nature, so it needs further elaboration and regulation into law.

The regulation of health in the laws and regulations in Indonesia is *lex specialis* regulated in the Law of the Republic of Indonesia Number 36 of 2009 concerning Health

(State Gazette of the Republic of Indonesia of 2009 Number 144). Hereinafter referred to as the Law on Health.

The Law on Health is the legal basis for health services. The purpose of health services is to maintain and improve the health status of the community as high as possible. Health services as a form of health efforts are activities and a series of activities carried out in an integrated, integrated and sustainable manner to maintain and improve the health status of the community. The forms of health efforts include disease prevention, health promotion, disease treatment and health restoration. The implementation of health efforts is carried out by the government and or the community. Fulfillment of the right to health services needs to pay attention to several principles, including: humanity, balance, benefits, and protection, respect for rights and obligations, justice, gender and non-discrimination and religious norms. There are current health problems that interfere with the development of future generations, one of which is malnutrition. The consequences of malnutrition in children will have a major impact on future generations. One of the serious health problems that must be addressed in Indonesia is stunting think that stunting is normal, and there is still an assumption that stunting is hereditary. (Zulaika, Y. et al. 2021)

The government's effort in realizing equitable health services is the social security program as mandated by the 1945 Constitution as the constitutional basis. In Indonesia, the milestone of the social security system was strengthened by the promulgation of Law Number 40 of 2004 concerning the National Social Security System (State Gazette of the Republic of Indonesia of 2004 Number 150) hereinafter referred to as SJSN. Social security as a form of social protection to ensure that all people can meet the basic needs of a decent life. One form of SJSN is the national health insurance, hereinafter referred to as JKN. The guidelines for implementing the JKN program are based on the Regulation of the Minister of Health of the Republic of Indonesia Number 28 of 2014 concerning Guidelines for the Implementation of the National Health Insurance Program. The organizer of the national health insurance is a social security administering body established by the Law of the Republic of Indonesia Number 24 of 2011 concerning the Social Security Administering Body (State Gazette of the Republic of Indonesia of 2011 Number 116), hereinafter referred to as the Law on BPJS. BPJS in carrying out its duties is based on the principles of mutual cooperation, non-profit, openness, prudence, accountability, portability, mandatory participation, mandated funds and the results of managing social security funds entirely for program development and for the greatest benefit of participants.

Health insurance in its implementation raises problems in health services such as medicines given to patients only those that are included in the list of the Health Social Security Administering Body (BPJS) with limited number and types. This can be detrimental to patients if they need drugs that cannot be financed by the Health Social Security Administration (BPJS). People who don't want to pay if they are not sick are also a problem in the Health Social Security Administering Body (BPJS). The results of research related to the rights of patients to receive medical services as participants of the Health Social Security Administering Body (BPJS) show that not all diseases are the responsibility of the Health Social Security Administering Body (BPJS), services are less responsive to patients participating in the Social Security Administering Body (BPJS).) health and the difference from the general patient. The delay in disbursement of claim financing for the Social Security Administering Body (BPJS) for health is also a problem in the efficiency and effectiveness of health services.

Health insurance by BPJS Kesehatan does not only cause problems in its implementation, but also raises legal problems. One of them is a legal problem in the form

of a conflict of rules. Health as a human right, requires the state to fulfill this right. The government's obligation to fulfill the right to health is regulated in the provisions of articles 15 to 19 of the Law on Health. These obligations include:

- a. availability of health facilities, both physical and social for the community to achieve the highest degree of health.
- b. availability of resources in the health sector that is fair and equitable for the entire community to obtain the highest degree of health.
- c. availability of access to information, education, and health service facilities that improve and maintain the highest degree of health.
- d. the availability of all forms of quality, safe, efficient and affordable health efforts.

The law on SJSN, based on the principle of compulsory participation, requires all residents to become participants in social security. Furthermore, Article 14 of the Law on BPJS regulates the obligations of everyone including foreigners who work for a minimum of 6 (six) months in Indonesia to be a participant in the social security program. The principle of compulsory participation in the Law on SJSN and the Law on BPJS, results in the imposition of administrative sanctions for those who do not register as members of BPJS. This is regulated in the provisions of Article 17 of the Law on BPJS which states that:

- (1) Employers other than state officials who do not implement the provisions as referred to in Article 15 paragraph (1) and paragraph (2), and any person who does not implement the provisions as referred to in Article 16 shall be subject to administrative sanctions.
- (2) The administrative sanctions as referred to in paragraph (1) may be in the form of:
 - a. Written warning
 - b. Fine; and/or
 - c. Not getting certain public services

The regulation of sanctions in the implementation of health social security is also regulated in Presidential Regulation of the Republic of Indonesia Number 64 of 2020 concerning the Second Amendment to Presidential Regulation Number 82 of 2018 concerning Health Insurance Article 42 paragraph (5), namely:

Within 45 (forty five) days from the active participation status as referred to in paragraph (3), paragraph (3a) and paragraph (3b) the participant as referred to in paragraph (1) must pay a fine to BPJS Kesehatan for each outpatient health service advanced level of stay that he obtained.

Based on the description above, it shows that health is a right that makes the government obliged to fulfill and regulate the implementation of these health rights as mandated in the 1945 Constitution and regulated in the Law on Health. On the other hand, there are regulations that impose sanctions for non-compliance with participation obligations as participants in health social security. Based on the description above, it becomes the background for the researcher to describe the problem as the background in this research plan.

II. Research Method

The type of research used in this legal research is juridical-normative research, namely research that explains and describes a matter that comes from existing legal provisions. In this study, the legal provisions used relate to the National Social Security System and the Social Security Administering Body.

The approach method used is the statutory approach and the conceptual approach. The statute approach or statutory approach is an approach that is carried out by examining

the laws and regulations related to the legal issues being faced. Thus, this study will analyze the legislation in the health sector which is the basis for legal analysis of the basis for setting sanctions for parties who do not register as participants in social security in the health sector. Conceptual approach or conceptual approach is an approach that contains the doctrines or views of scholars who have developed in the field of law. The doctrines and principles in the science of law become a reference for the preparation of research in building a legal argument to solve the problems studied.

The sources of legal materials used consist of primary legal materials and secondary legal materials. The primary legal materials used include the 1945 Constitution of the Republic of Indonesia, the Law of the Republic of Indonesia Number 40 of 2004 concerning the National Social Security System, the Law of the Republic of Indonesia Number 36 of 2009 concerning Health, the Law of the Republic of Indonesia Number 24 of 2011 concerning the Social Security Administering Body, and Presidential Regulation of the Republic of Indonesia Number 64 of 2020 concerning the Second Amendment to Presidential Regulation Number 82 of 2018 concerning Health Insurance. Secondary legal materials in the form of publications on law include legal journals, textbooks, legal dictionaries, and other sources related to this research.

III. Result and Discussion

3.1 Sanctions for Parties Who Do Not Register as Participants in the Health Social Security Program

The obligation to become a participant in the health social security program has legal consequences if it is not implemented. Article 17 of the Law on BPJS provides administrative sanctions in the form of written warnings, fines, and/or not receiving certain public services. Elucidation of Article 17 paragraph (2) describes the meaning of certain public service phrases including, among others, processing of business permits, building permits, proof of ownership of land and building rights.

Provisions regarding the imposition of sanctions for not receiving certain public services have been realized by the Director General of Determination of Land Rights and Registration (PHPT) of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency through Circular Letter Number HR.02/164-400/II/2022. The circular letter includes the BPJS Health membership card as a requirement in the Application for Registration Services for the Transfer of Land Rights or Ownership Rights to Flat Units due to Sale and Purchase. The provisions apply to all BPJS Health classes and come into effect from March 1, 2022.

The implementation of these provisions is not only in accordance with the mandate of Article 17 of the Law on BPJS, but also in accordance with the Presidential Instruction of the Republic of Indonesia Number 1 of 2022 concerning Optimizing the Implementation of the National Health Insurance Program. In point 17, it is instructed to the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency to ensure that applicants for registration of transfer of land rights due to sale and purchase are active participants in the National Health Insurance program.

Applicants for registration of transfer of land rights due to buying and selling who are not participants in the health social security program have indirectly been sanctioned through SE Number HR.02/164-400/II/2022. The provision of these sanctions is carried out in an effort so that all Indonesian citizens can register themselves as participants in the social security program in accordance with the mandate of the Law on SJSN considering that participation in the health social security program has not been implemented

comprehensively. It is proven that based on the results of the 2020 Program Management Report & 2020 Financial Report (Audit) BPJS shows that the percentage of the population who has not registered for JKN is 17.6% of the total population of Indonesia in 2020 which amounted to 270,203,917 people. The factors behind the low ownership of JKN cards include low public knowledge, lack of socialization, lack of health promotion media, and lack of awareness of family heads about the importance of JKN.

Sanctions are an important part of a statutory regulation. According to Black's Law Dictionary, the so-called "sanction" is defined as "a penalty or coercive measure that results from failure to comply with a law, rule or order. Sanctions are defined as punishments or coercive measures resulting from failure to comply with laws, rules or orders.

Administrative sanctions have 4 elements, namely being a tool of power (*machtmiddelen*), having the nature of public law (*publicrechtlijk e*), being used by the government (*overheid*), as a reaction to non-compliance (*reactive op niet-naleving*). According to Philipus M. Hadjon, several forms of sanctions known in administrative law are:

- a. *Bestuursdwang*, namely the authority to at the expense of the violators to get rid of, prevent, carry out, or return to their original state what is contrary to (certain statutory provisions) that already exist or are being held, created or placed, exploited, neglected (abandoned), damaged or taken.
- b. Withdrawal of decisions (favorable provisions, such as permits, payments, subsidies)
- c. The imposition of forced money by the government that functions as a substitute for government coercion which is practically difficult to implement or is seen as too heavy a sanction.

The imposition of administrative sanctions is aimed at the actions of the violator. This sanction is intended to stop the violation. The type of administrative sanction is reparatory which means to restore to its original state. Administrative sanctions also have the type of punitive sanctions and regressive sanctions. Punitive sanctions aim to punish someone, for example in the form of administrative fines. Meanwhile, regressive sanctions are a reaction to non-compliance with the provisions of the issued provisions.

The application of administrative sanctions is carried out by state administrative officials without going through judicial procedures. Thus, the application of administrative sanctions is related to policies in general in order to create order, provide legal certainty and guarantee protection for everyone from any disturbance.

The non-availability of registration services for the transfer of land rights or ownership rights to flat units due to buying and selling due to not being a participant in the health social security program is included as a regressive sanction. The Law on BPJS has required all Indonesian citizens to become participants in the health social security program and due to non-compliance the rights to public services were revoked.

Without realizing it, with this provision, the government has violated the rights of its citizens. The health social security program is the right to health for the community that must be provided by the government. It is the duty of the government to distribute the program evenly throughout Indonesia considering that there are still many people who have not been registered. In addition, the government has also violated the principle of equal treatment/non-discrimination in the administration of public services as regulated by the Law of the Republic of Indonesia Number 25 of 2009 concerning Public Services. Hereinafter referred to as the Law on Public Services. Elucidation of Article 4 letter g explains that every Indonesian citizen has the right to get fair services. So that there should be no discrimination in services to citizens who have not become participants in the health

social security program because health social security participation is not an obligation but a right for Indonesian citizens.

3.2 Granting the Right to Fair Health in Law Number 24 of 2011 concerning Social Security Administering Bodies

The Indonesian state as a country that applies the concept of a welfare state, the state is responsible for realizing the welfare of its people, namely by interfering in the affairs of its citizens. One form of government intervention for the benefit of its citizens is in the health sector to achieve the highest level of health. In fulfilling the right to health, the following principles must be met: a) Availability of health services; b) Accessibility; c) Receipts; d) Quality. Furthermore, the government's obligation to fulfill the right to health is realized in the form of policies. Government policies should comply with the following principles: a) respecting the right to health; b) protect the right to health; c) fulfill the right to health.

Health is a basic right that humans have throughout their lives. Every human being has the right to an optimal degree of health. The obligation to fulfill the right to health is the responsibility of the Government. Health is a crucial issue in every country, because it is closely related to everyone's integrity to be able to live with dignity.

The basic right to health is divided into two, namely basic social rights and basic individual rights. Basic social rights include the right to health care (the right to health care). Individual basic rights are supported by the right to self-determination and the right to information.

IV. Conclusion

The obligation to become a participant in the health social security program has legal consequences if it is not implemented, namely administrative sanctions, one of which is not receiving certain public services. Circular Letter Number HR.02/164-400/II/2022 issued by the Director General of PHTP, Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, indirectly provides administrative sanctions in the form of not providing services for applicants for Registration of Service for the Transfer of Land Rights or Ownership Rights. Flats unit due to buying and selling which has not been a participant in the health social security program. With this provision, the government has violated the rights of its citizens. The health social security program is the right to health for the community that must be provided by the government. It is the duty of the government to distribute the program evenly throughout Indonesia considering that there are still many people who have not been registered. In addition, the government has also violated the principle of equal treatment/non-discrimination in the administration of public services as regulated by the Law on Public Services. Elucidation of Article 4 letter g explains that every Indonesian citizen has the right to get fair services. So that there should be no discrimination in services to citizens who have not become participants in the health social security program because health social security participation is not an obligation but a right for Indonesian citizens.

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