

STATE AUTHORITY FOR HEALTH SERVICES FOR PATIENTS IN INDIGENT STATUS

Betty Yunita Sari^{1*}, Mokhamad Khoirul Huda², Ninis Nugraheni³

^{1,2,3}Magister Ilmu Hukum, Universitas Hang Tuah Surabaya, Surabaya, Indonesia

bettyyunita@gmail.com^{1*}, khoirulhuda@hangtuah.ac.id², ninisnurgaheni@hangtuah.ac.id³

Abstract

The objective of this research is to determine the legal framework regarding the role of the state in providing health services and to identify the legal safeguards available to impoverished individuals seeking healthcare in hospitals. This research employs normative juridical research methods, which involve a statutory and conceptual approach. The findings of this study indicate that the state's responsibility in fulfilling the right to health, as outlined in Law No. 17 of 2023 on Health and Law No. 24 on the Social Security Agency for Health (BPJS), lacks consistency in terms of the essence and substance of state responsibility. It has been demonstrated that there are still a significant number of economically disadvantaged individuals in Indonesia who qualify as recipients of contribution assistance (PBI). Additionally, patients are currently lacking legal protection in relation to their entitlement to receive services at a hospital, as stipulated in Article 189 of Law number 17. This refers to the state's obligation to ensure the right to health by offering sufficient and easily accessible healthcare facilities for all segments of the population. The state bears the primary obligation to ensure the fulfilment of its citizens' right to health as mandated by the constitution. States shall prioritise and ensure the realisation of the right to health without any kind of neglect or disregard.

Keywords: *state responsibility, right health services*

INTRODUCTION

Health is an inherent entitlement of every individual, and every member of society possesses the entitlement to get medical treatment, including those who are economically disadvantaged. (incapable). The Basic Law of the Republic of Indonesia of 1945, also known as UUD 1945, the Constitution of the Republic of Indonesia, mandates that the central and local governments are responsible for providing health insurance to the population, particularly those who are poor and incompetent. The State, particularly the Government, is obligated to provide the right to health, as stated in Article 28H paragraph (1) which states that "Every individual has the entitlement to a clean and healthy living environment and the ability to access healthcare services." Additionally, article 34 of the regulation explicitly addresses the right to health services, stating that "The State bears the responsibility for ensuring the provision of healthcare facilities and sufficient public service amenities." According to Articles 28H and 34 of the 1945 Constitution of the Republic of Indonesia, it is evident that the State is responsible for ensuring that the health rights of every Indonesian person are met (Arimbi, 2020a; Hariri et al., 2021). This includes providing healthcare facilities and public services.

One of the essential human entitlements is the right to reside in a state of tranquilly. The rights to adequate health are crucial for achieving the right to a tranquil existence. Health is a fundamental component of human rights, as stated in the Universal Declaration of Human Rights (UDHR). The State bears the obligation for ensuring the realisation of human rights, especially the right to health. Hence, it is the duty of the State/Government to ensure the realisation of the right to health as an integral component of Human Rights (Idy & Bakhtiar, 2021a; Malik et al., 2021; Ramadhani & Anggraeni, 2022a)

Indonesia is a country that follows the welfare state model, which means it takes responsibility for the well-being of its citizens. This commitment is clearly stated in Section IV and Article 28H paragraph 1 of the Indonesian Constitution, which guarantees every individual the right to a secure and peaceful life, a suitable place to live, a healthy environment, and access to healthcare. In relation to health services, these laws clearly establish legal certainty that the Government of Indonesia is obligated to respect, protect, enforce, and serve the healthcare needs of Indonesian residents. The government has the authority to establish arrangements and oversee the sphere of health care in order to achieve its commitments (Ramadhani & Anggraeni, 2022b; Usman, 2020)

Health is a fundamental entitlement of every individual and a crucial aspect of overall welfare that should be achieved in alignment with the principles of Pancasila and the Indonesian Constitution of 1945 (Arimbi, 2020b; Lira, 2023). Efforts to uphold and enhance public health are conducted with non-discriminatory, participatory, and sustainable principles. These activities aim to develop Indonesian human resources and enhance the nation's resilience and competitiveness for national development. Any health problem that leads to a health disorder in the Indonesian population would have significant economic consequences for the country. Similarly, any effort to enhance public health also entails an investment in the country's growth. The MPR No. XVII/MPRRI/1999 and the Law No. 39 of 1999 on Human Rights have reinforced the change in thinking that the government has the duty to oversee the right to a healthy life for all its citizens, even those who are impoverished or disabled.

Government-sponsored health insurance is authorised by the National Social Security System Act (henceforth referred to as the SJSN Act) and the Law on the Organisers of Social Security Bodies (henceforth abbreviated as the BPJS Act). Article 19 provides evidence that "health insurance is organised with the aim of ensuring that participants enjoy the benefits of health maintenance and protection in meeting basic health needs". A fundamental health requirement is the provision of medical treatment that facilitates the recovery of an ailing individual, enabling them to resume their age-appropriate daily functioning (Hariri et al., 2021; Idy & Bakhtiar, 2021b; Yustina, 2019).

Health care policy for the impoverished continues to be a fundamental concern, particularly in Indonesia. It cannot be denied that poverty remains a fundamental human right for the advancement of every nation, despite the fact that the era has entered the era of globalisation and poverty has always been a problem in every country. Health development endeavours are conducted in a holistic and enduring fashion, striving to enhance the knowledge, determination, and capacity of all individuals to lead a healthy lifestyle, thereby attaining the utmost standard of public health. Health is a fundamental right of every individual, and all citizens, including the impoverished, are entitled to health care.

The government's concern for the well-being and standard of health of its populace is evident in the 1945 Constitution of the Republic of Indonesia Article 28H paragraph (1), which states, "Every individual is entitled to a healthy living environment, the right to access health services, and peace of mind from the moment of birth and within." Furthermore, as stated in the 1945 Constitution of the Republic of Indonesia it is anticipated that the community will possess the means to obtain health insurance and access high-quality health services; thus, protection is provided to ensure that the society's fundamental health requirements are met (RPJPBK 2005-2025, Health department of Indonesia 2009). Act No. 40 of 2004 concerning SJSN is a regulatory measure established to execute the 1945 Constitution of the Republic of Indonesia mandate. Its purpose is to facilitate the synchronisation of diverse social security systems so as to afford equitable and uniform protection to all members of society.

The Indonesian Government has implemented several initiatives to ensure that all citizens have access to sufficient health care, as evidenced by Act No. 40 of 2004 on SJSN. Although this could be a revolutionary shift for the insurance industry in Indonesia, specifically Social Insurance, where health insurance is one of the security programmes. Health care is an endeavour that can be undertaken to enhance the overall well-being of communities or groups, and it is imperative that it be conducted in healthcare facilities, such as hospitals or clinics, that conform to the specifications of health care size and quality. Given that health development is a national endeavour, it is incumbent upon the government, as the preeminent authority on healthcare, to ensure that its responsibilities regarding the delivery of health services are duly met. Every Indonesian citizen is involved in the implementation of health sector development, as health development is intricately intertwined with other sectors.

The objective of health development is to enhance the knowledge, motivation, and capacity of all individuals to lead healthy lives, with the aim of achieving the greatest feasible improvement in the health status of a nation's populace. The SJSN Law places significant emphasis on the principle that every citizen is entitled to the same privileges, including access to health sector resources and affordable, high-quality health services. In accordance with Article 47 of BPJS Health Regulation No. 1 of 2014 regarding the implementation of Health Insurance, the Social Security Administering Body (BPJS), a public legal entity established to administer social security programmes, may alleviate the community's financial strain as it pertains to accessing hospital services. BPJS, in its capacity as a health insurance provider, ensures the execution of health programmes (Erniaty & Harun, 2020).

As health service providers, hospitals are obligated to actively contribute to the provision of high-quality healthcare to the community in alignment with their designated function, as mandated by Law No. 17 of 2023 concerning Health. Nevertheless, the mere existence of posters indicating that the hospital accepts BPJS patients signifies that the health service or hospital supports the social security health programme (BPJS). This does not imply, nevertheless, that the community is receiving service that is commensurate with their expectations. The prevalence of health service refusals experienced by BPJS participants has not changed significantly since the National Health Insurance (JKN) system was implemented, which was coordinated by the National Health Administering Agency (BPJS) for Health. On January 1, 2014, the government initiated this programme, and throughout its existence, a

number of societal issues surfaced. A considerable number of medical facilities deny admission to Social Security Administration (BPJS) participants due to capacity constraints in the treatment rooms (Buana et al., 2022; Fadhillah et al., 2021)

Hospitals have an obligation to provide health service facilities for the poor and unable to afford them. This is accomplished through the provision of free ambulances, emergency services without down payment, assistance for victims of natural disasters and extraordinary events, and social service for humanitarian missions. According to PMK Number 4 of 2018, Article 2, paragraph (1), letters e and f, which pertains to hospital obligations and patient responsibilities, each hospital is obligated to the following: "To furnish amenities and services to individuals who are disadvantaged or impoverished, as well as to execute social functions" (p). This is achieved through the provision of Class III treatment beds for individuals who are economically disadvantaged, impoverished, or recipients of social health security. In addition to promoting health through communication, education, and information, hospitals fulfil their social responsibilities by offering emergency medical services, free ambulances, assistance to victims of natural disasters and extraordinary events, and social services to impoverished patients.

Obviously, hospitals will have direct or indirect contact with patients in the course of providing medical services. There is an expectation that hospitals will have a designated area for individuals who are economically disadvantaged or unable to pay for health services such as treatment, illness restoration, and rehabilitation. The location in question consists of healthcare facilities and related services. Nevertheless, deficiencies persist in the delivery of healthcare services, particularly for those who are economically disadvantaged or impoverished. There are still facilities that deny admission to patients for a variety of reasons. When it comes to health services, the poor frequently utilise the most, with the local Community Health Centre and Regional General Hospital (RSUD) giving priority to this population. The fact that services at the Regional Hospital or Community Health Centre are significantly less expensive than at private institutions is taken into account. However, the service provided fell short of expectations. A divergence in the approach taken by healthcare professionals at the local Community Health Centre or Regional Hospital can force those who are ill or receiving treatment there to embrace the harsh realities that may arise. The efficiency of medical services provided by health workers at the local Community Health Centre or Regional Hospital may be inferior to those offered to patients who have the financial means to pay. The selection process for regional hospitals and local health centres was influenced by government support, including health insurance and health certificates provided to participants or members of the Health Insurance Administering Body (BPJS). Private institutions that have not yet established a partnership with BPJS expressed interest but were not selected due to financial constraints that prevented them from personally covering the costs.

The preparation of the National Social Security System (SJSN) for the implementation of social security for all citizens is grounded in the following philosophical foundation or fundamental thinking:

- a) The execution of SJSN is founded upon the constitutional and human liberties of all individuals.
- b) The execution of SJSN serves as an expression of the government's accountability towards the advancement of the economy at large and the well-being of society.
- c) The objective of the social security programme is to provide each individual with the means to fully develop into a productive member of society.
- d) SJSN implementation is associated with the observance of human dignity and is grounded in humanitarian principles.

The primary objective of SJSN is to ensure that every participant and their family members have access to the fundamental necessities for a decent existence.

In the meantime, Article 28H paragraph (3) and Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia provide the legal foundation for the implementation of SJSN. The regulations pertaining to Article 28H paragraph (3) and Article 34 paragraph (2) are found in the Second and Fourth Amendments, respectively, to the Indonesian Constitution of 1945. In accordance with this constitutional mandate, Law No. 40 of 2004 pertaining to the National Social Security System subsequently came into effect (UU SJSN). Following the Conventional Court's ruling in Case no. 007/PUU-III/2005, the DPR and the Government issued Law no. 24 of 2011 regarding the National Social Security Administering Body (UU BPJS), a regulation that implemented the SJSN Law at the legal level.

The regulatory frameworks that govern the implementation of the SJSN Law and the BPJS Law encompass both institutional and government regulations. It took fifteen years (2000-2014) to finalise the entire legal framework for the implementation of SJSN, which included the 1945 Constitution of the Republic of Indonesia, the SJSN Law, and its implementing regulations.

- a) Article 28, paragraph 3, of the Fourth Amendment (2002) and the Second Amendment to the Constitution of the Republic of Indonesia (2000) state, "Everyone is entitled to social security that facilitates their complete growth and development as productive members of society." Section 28H, subsection 3, designates social security as an inherent human right.
- b) Paragraph (2) of Article 34: "The state develops a social security system for all people and empowers weak and incapable people in accordance with human dignity." Paragraph (2) of Article 34 designates social security as a component of the framework for coordinating the domestic economy and social welfare.

UU SJSN, UU no. 40 of 2004, pertains to the National Social Security System. As an implementation of the constitutional mandate regarding the constitutional rights of all individuals to comprehensive social security for all Indonesian citizens, the SJSN Law was enacted on October 19, 2004. By coordinating the implementation of various forms of social security that have been implemented by multiple organising bodies in order to reach a larger membership and provide greater benefits to each participant, the SJSN Law serves as the legal foundation.

- c) UU BPJS No. 24 of 2011 with respect to Social Security Administering Bodies

The BPJS Health and BPJS Employment, which administer social security, were established in accordance with the BPJS Law. A health insurance programme for the entire population of Indonesia is coordinated by BPJS Health. All employees in Indonesia are covered by BPJS Employment's work accident insurance, mortality insurance, old age insurance, and pension insurance programmes. The BPJS Law governs the operations, responsibilities, jurisdiction, and administration of social security administering bodies. The BPJS Law governs the processes by which the four *Perseros* that administer the social security programme are dissolved and how their assets, liabilities, rights, obligations, and personnel are transferred to BPJS.

The provision of comprehensive health insurance for the populace of Indonesia has emerged as a national objective. In reference to this, Law No. 24 of 2011 concerning the Social Security Administering Body (BPJS) serves as the foundation for the implementation of Law No. 40 of 2004 concerning the National Social Security System (SJSN). The establishment of the Social Security Administering Body (BPJS) for Health was dedicated to the administration of health insurance programmes for the entire Indonesian population.

As stated in Health Law Number 17 of 2023, Article 189 point f, hospitals are entrusted with social responsibilities. These responsibilities encompass a range of activities such as furnishing service facilities for impoverished or destitute patients, offering emergency services without requiring a down payment, providing complimentary ambulances, aiding victims of disasters and outbreaks, and conducting social service for humanitarian missions. In contrast,

free services for impoverished patients, an area where BPJS and hospitals ought to collaborate structurally and functionally, are never mentioned or discussed in Law No. 24 of 2011 pertaining to BPJS. Given this context, the author wishes to conduct additional research regarding the state's obligation to furnish healthcare services to economically disadvantaged individuals.

RESEARCH METHOD

This study was conducted in accordance with normative juridical research, which is a method of inquiry that centres on the examination of rules or standards in positive law. The author of this study employed the Statute Approach, which examines legal products within the established norm system in Indonesia, such as pertinent statutory regulations, court decisions, and judicial rulings (Indriati & Nugroho, 2022; Negara, 2023). The author commences this research with the title and subsequently employs a Conceptual Approach grounded in theories to analyse the definitions and meanings of key terms within the title. These terms consist of expert opinions summarised by researchers and book sources, which serve as the theoretical foundation for this investigation.

The purpose of the collection of legal materials is to acquire such materials in order to conduct research. Document study is the method utilised to gather legal materials that are pertinent to and support the presentation of this research (library study). As required for research, literature review is the examination of written information regarding the law that originates from a variety of widely published sources. Legal literature, including books, articles, journals, print media, and electronic media, that pertains to the investigation of solutions to the issues raised in this study (Marzuki, 2021). Documentation procedures are employed to gather legal materials, which involve utilising documents pertinent to the subject matter beyond library data.

The ultimate goal is to compile the legal materials into state documents, such as statutes or administrative orders. After collecting primary and secondary legal materials, which are subsequently organised in a systematic fashion, the information is processed. Systematisation entails the categorization of legal materials in order to streamline the processes of analysis and construction. Following this, the obtained legal materials are systematically examined, analysed, and presented in order to provide solutions to issues.

RESULT & DISCUSSION

Hospital as a Subject of Law

The legal subjects, whether they are individuals (*natuurlijke persoon*), legal entities (*rechtspersoon*), or positions (*ambt*), have the capacity to perform legal activities according to their skills (*bekwaam*) or authority (*bevoegdheid*). Within society, several legal connections emerge from the legal actions of individuals. This legal action marks the initiation of a legal relationship, which refers to the transactions between legal entities that hold legal significance or result in legal consequences. The law serves as the regulatory framework for legal relations between individuals, ensuring fairness, balance, and the fulfilment of rights and obligations for each party involved. The purpose of law is to establish a framework for governing the rights and responsibilities of individuals under its jurisdiction. Furthermore, legislation serves as a means of safeguarding legal entities (Calhoun Deady & Steele, 1976; Hall, 1975).

Mertokusumo asserts that the primary purpose of legislation is to safeguard human interests. The implementation of the law is necessary to safeguard human interests. The implementation of the law can proceed in a regular and peaceful manner, but it can also occur as a result of law infractions (Djatmiko, 2019). Law violations arise when specific legal entities fail to fulfil their prescribed obligations or infringe against the rights of other legal entities. Individuals whose rights are infringed upon must be provided with legal safeguards.

The primary purpose of law is to serve as a regulatory and protective tool, ensuring a harmonious, balanced, peaceful, and fair environment for legal subjects to engage in legal relationships. There are however many who argue that the purpose of law is to establish a peaceful organisation of society. The purpose of law is to maintain peace among people by safeguarding certain human interests, both material and ideal, such as honour, freedom, life, property, etc., against infringement. The law seeks peace...Peace among humans is upheld by the enforcement of laws that safeguard various human interests, including both tangible and intangible aspects such as honour, freedom, life, and property. These laws serve to protect individuals from any actions that may cause harm or disadvantage. These legal objectives will be accomplished when each legal entity receives their rights equitably and fulfils their obligations in line with the relevant legal regulations.

Legal protection for individuals is a universally recognised principle that is embraced and enforced by every nation that considers itself a lawful state. However, as Paulus E. Lotulung points out, each country has its own unique methods and mechanisms for achieving this legal protection, as well as varying degrees to which such protection is provided.

Hospitals have been granted legal recognition as legal bodies, known as "rechtspersoon" in accordance with Hermien Hadiati Koeswadi. Consequently, hospitals bear the responsibility and legal duties for their acts. Hospitals are autonomous entities that have the authority to engage in legal proceedings, employing physicians who operate under contractual agreements. In accordance with the regulations stated in Article 7 of the Hospital Law and Constitutional Court decision no. 38/PUU-IX/2013, hospitals can be constructed by the government, regional government, or private sector. Government hospitals, often known as regional government hospitals, are structured as Technical Implementation Units or Regional Technical Institutions. These hospitals are managed by the Public Service Agency (BLU) or Regional Public Service Agency (BLUD). Private hospitals are legal entities that focus on providing healthcare services, excluding public hospitals that are operated by non-profit organisations. There are two distinct categories of hospitals recognised as legal entities: public hospitals, which are owned by the government, and private hospitals, which are privately owned.

A hospital, being an organised body, is also considered a company. The name "corporation" is derived from the Latin word "corpora" or "corpus," which translates to "body" or "body." According to Satjipto Rahardjo, a company is a legal entity that is created by legislation. The structure of this entity comprises a body that incorporates the animus component, so giving it a distinct personality. The individual being referred to is a legal entity, known as a "rechtspersoon" in legal terms, that possesses the ability to assume the rights and responsibilities typically associated with a human being. A corporation, as defined by Black's Law Dictionary, is a legal entity, typically a business, that possesses the legal power to act independently from its owners. Alternatively, a collective of individuals formed in compliance with legal provisions and with legal status

Government Responsibilities in Public Health Services

The state plays a crucial role in meeting the fundamental needs of its citizens, particularly through the provision of comprehensive healthcare services. Health is universally acknowledged as a fundamental human right, encompassing a range of entitlements that are inherent to human nature and existence, bestowed by a higher power and obligatory in nature. The state ensures that these principles are honoured, upheld, and protected. This research seeks to ascertain the specific nature of governmental accountability for health insurance from the standpoint of human rights. This research employs the normative legal research technique. The findings of this study indicate that the government has a duty to guarantee sufficient and optimal healthcare services to all individuals in order to fulfil their fundamental right to health. In order

to uphold and fulfil the responsibilities of the state, there is a commitment to apply human rights standards on the right to health (Ardiansah, 2020; Tang et al., 2004)

Health is a fundamental necessity for all individuals, and as such, it is a legally protected right for every citizen. Every nation acknowledges that good health is the most valuable asset for attaining prosperity. Consequently, enhancing healthcare services is fundamentally a strategic allocation of resources towards human capital development in order to attain a thriving community. In order to enhance the well-being of individuals in developing nations like Indonesia, it is imperative for the government to play a pivotal role by providing public services that cater to fundamental necessities such as healthcare, education, and other essential needs. The state plays a crucial role in meeting the fundamental needs of its citizens, particularly through the provision of comprehensive healthcare services. Health is universally acknowledged as a fundamental human right, encompassing a range of entitlements that are inherent to human beings and bestowed upon them by a divine authority. Human dignity is honoured, safeguarded, and defended by the state, law, government, and all individuals. Within the realm of human existence, health is a fundamental entitlement that the state is obligated to honour, uphold, and safeguard.

The government's commitment to protect human rights is rooted in the democratic concept that it is entrusted with the ability to safeguard the rights of its citizens. Furthermore, the notion of the welfare state, as a contemporary model of governance, has bestowed upon the government enhanced authority to take action. The purpose of this power is only to advance and accomplish the realisation of human rights. The government is now responsible not only for preventing the violation of someone's rights, but also for actively striving to fulfil those rights. Similarly, the government has a duty to ensure the realisation of the right to health.

Law Number 40 of 2004, also known as the National Social Security System (SJSN), stipulates that the government has a duty to provide health insurance policies or programmes that are equitable and easily accessible to all citizens, in order to ensure their access to healthcare. The government is required to develop and enforce laws for an equitable insurance guarantee system for residents, which includes providing health insurance for all citizens. Law Number 32 of 2004 on Regional Government stipulates that the responsibility for the health sector is with the Central Government, Provincial Governments, and Regency/City Governments. According to Law Number 32 of 2004, Regional Governments (Provincial/City Districts) are required to enhance the standard of living for the population by promoting fairness and equality, ensuring access to healthcare services, providing adequate social and public facilities, and establishing a social security system. The allocation of state authority and responsibility for each level of government is comprehensively outlined in Government Regulation Number 38 of 2007, which pertains to the Division of Government Affairs between the Government, Provincial Regional Governments, and Regency/City Regional Governments. This obligation that must be fulfilled should be grounded in the essence of honouring, safeguarding, and ensuring the fundamental entitlements of individuals to sufficient healthcare.

Government Regulation Number 38 of 2007 stipulates that the health sector is a matter of government responsibility that is shared between different levels of government, known as concurrent government affairs. This responsibility is jointly managed by the central government, provincial regional government, and regency/city regional government. Eighteen According to Attachment 2 of PP Number 38 of 2007, the Regional Government (province, city, or district) has the power to offer local health insurance and carry out national health insurance.

CONCLUSION

The state's obligation to fulfil the right to health, as outlined in the Law of the Republic of Indonesia Number 17 of 2023 concerning Health and the Law of the Republic of Indonesia

Number 24 of 2011 concerning BPJS, lacks consistency. It is evident that the implementation of these laws still fails to include a significant number of impoverished individuals in Indonesia as recipients of contribution assistance (PBI). As to Article 189 point "f" of Law of the Republic of Indonesia Number 17 of 2023 concerning Health, hospitals are required to fulfil their social functions, which is a part of the social policy. Health is an inherent entitlement for all individuals, regardless of their socioeconomic status.

Consequently, every person, family, and society, including those who are economically disadvantaged, should have access to healthcare services to safeguard their well-being. The government is tasked with overseeing and safeguarding the right to utmost public health through regulation. The government fulfils its obligation to ensure the right to health by providing sufficient and easily accessible healthcare services to the population. The principle of state responsibility in ensuring the right to health is a legally binding obligation, hence the government is required to act as the embodiment of the state in order to fulfil people's right to health. Disregarding the constitutional right to public health by denying access to sufficient public health services constitutes a violation.

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