OPEN ACCESS

Scholars International Journal of Law, Crime and Justice
Abbreviated Key Title: Sch Int J Law Crime Justice
ISSN 2616-7956 (Print) |ISSN 2617-3484 (Online)
Scholars Middle East Publishers, Dubai, United Arab Emirates
Journal homepage: https://saudijournals.com

Original Research Article

Legal Reconstruction of BPJS Insurance Regarding the Tariffs on Types of Hospitals Based on Justice Values

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DOI: 10.36348/sijlcj.2023.v06i12.005 | **Received:** 14.11.2023 | **Accepted:** 22.12.2023 | **Published:** 27.12.2023

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Abstract

The government's strategic plan in the health sector is contained in the National Medium-Term Development Plan (RPJMN) 2020 to 2024, in the RPJMN there is a form of policy formulation in the health sector that focuses on various preventive efforts to control disease cases that occur in Indonesia. The purpose of this paper is to reveal (to explore) the fact that there have been deviations from the Health Policy on Determining BPJS Rates at Different Types of Hospitals. The approach method in this study uses a socio-legal approach method. Namely data obtained from qualitative. Processing this research data with primary data. The results of this research providing conclusion and advice that developing social security for all people has not been based on the value of social justice. This clearly can be found in the implementation of BPJS which still distinguishes tariff classes and affects services based on social justice values, BPJS service barriers in the application of tariffs to hospitals of different types for now, namely legal factors, society, culture, etc, and quality control efforts and make efforts to control costs in the application of BPJS tariffs based on the value of justice and the Making Institution (DPR and the President) must make rule breaking changes to medical regulations, regarding hospitals, and BPJS, the government must dare to emphasize that BPJS is obliged to carry out government functions in the field of public services, and the government must carry out Reclassification of coding and the establishment of standard services for interventional and invasive cardiac procedures between PERKI and P2JK (Center for Health Insurance and Financing) of the Ministry of Health.

Keywords: Legal Reconstruction, Health Policy, BPJS, Justice Value.

INTRODUCTION

Policy is a series of concepts and principles that serve as guidelines and the basis for plans in carrying out work, leadership and ways of acting. The government's Strategic Plan for the health sector is contained in the National Medium Term Development Plan (RPJMN) 2020 to 2024, in the RPJMN there is a form of policy formulation in the health sector that focuses on various preventive efforts to control disease cases that often occur in Indonesia.

Some of the health problems in Indonesia, before Covid-19 occurred, which are currently widespread are BPJS problems, poor nutrition and maternal mortality. The resolution of this problem must of course be adjusted to the applicable laws and the 2020-2024 national medium term development plan (RJPMN) which was prepared during the Jokowi-Ma'ruf Amin government era, in this second period.

Having new focus points in resolving health problems will definitely be the government's responsibility related to National Health Insurance (JKN) and all of this is intertwined and integrated with BPJS. This means that BPJS will be given a big task in improving and realizing Indonesia's health standards now and in the future. Policies in the health sector, as published in the initial draft of the National Medium Term Development Plan (RPJMN 2020-2024), in the context of socialization fulfill the principle of publicity to become the RPJMN which will be used as the basis for determining future health service policies. In the target plan prepared by Bappenas, the 2020-2024 RPJMN which has been ratified by the Jokowi government.

Accountability for determining service rates as regulated in Minister of Health Regulation No. 69 of 2013 in conjunction with Minister of Health Regulation no. 59 of 2014 in conjunction with Minister of Health Regulation no. 56 of 2016 is a problem or problem in itself that researchers will reveal in this dissertation research problem. The difference in tariff values between hospital classes is very obvious which can cause gaps (deviations or discrepancies). Facts that researchers found in medical practice, for the same type of INA-CBG, for example; Class A hospitals are paid 85% more expensively than class D hospitals. The findings of medical practice in the health sector (BPJS implementation) indicate the potential for price makers to be very vulnerable to conflict of interests. This indication can objectively be traced from the empirical facts of the application of the Hospital Base Rate (HBR) value in each class of hospital.

The occurrence of gaps (deviations or discrepancies) in the practice of applying BPJS rates to different types of hospitals or not the same if the cases faced are the same, so that the policy gives rise to a conflict of interests of price makers and can be the beginning of deviations and even If it is not immediately addressed by improving the system, it is feared that it will lead to wider consequences, namely social inequality (services that are less professional and not optimal). The lack of BPJS's role as a strategic purchaser in providing input on JKN benefits, especially medicines, has given rise to benefits that contribute significantly to JKN-KIS program expenditure. Ironically, the drug benefits are paid using the FFS scheme in the form of top-up or unbundling of INA-CBG's. Fraud detection in the implementation of INA-CBG's is still not optimal due to a number of factors. First, there are obstacles experienced by BPJS in being able to track patient medical records at each health facility as part of the investigation process. Here, regulations are needed that cover the investigative team to be able to track patient medical records related to the services provided by health facilities. Or regulations that require health facilities to report what types of services have been provided to patients in the INA-CBG grouper application. Second, the INA-CBG grouper currently used is still very weak and unable to detect potential fraud. This requires further efforts in terms of strengthening verification.

Based on the background above, the author is interested in conducting research with the title "Reconstruction of BPJS Regulations on Tariffs for Types of Hospitals Based on Justice Values".

II. Theoretical framework

Talking about theory, 3 (three) theories will be referred to to analyze this research, namely:

A. Basic Theory (Grand Theory): Pancasila Theory of Justice. In Pancasila the word justice is found in the second principle and the fifth principle. The value of just humanity and social justice contains the meaning that the essence of humans as cultural and natural beings must have a just nature, that is, fair in relation to oneself, fair towards other humans, fair towards the community, nation and state, fair towards the environment and fair towards God. The Almighty. The consequences of the values of justice that must be realized include: (Mufridah, 2022) Distributive justice, namely a relationship of justice between the state and its citizens, in the sense that it is the state that is obliged to fulfill justice in the form of sharing justice, in the form of welfare, assistance, subsidies and opportunities in living together based on rights and obligations; Legal justice, namely a relationship of justice between citizens and the state and in this case it is the citizens who are obliged to fulfill justice in the form of obeying the laws and regulations in force in the state; and commutative justice, namely a reciprocal justice relationship between one citizen and another. As is known, social justice is part of the formulation of the fifth principle of Pancasila. This social justice presupposes individual justice. This means that the attitudes or behavior of Pancasilaist individuals are attitudes and behavior that have a priority or virtue in the form of justice. Besides that, individuals are also the goal of justice. What this means is that justice is not only aimed at society in general, but also at individuals. However, this individual is not just an atomistic entity that is completely separated from its socio-cultural context, but rather an individual in its connection with other individuals and with its society. Here social justice is not the same as socialism which does not really care about individual interests.

B. Middle Theory: Legal System Theory. This theory talks about law as a system, Lawrence M. Friedman suggests that there are components contained in law, namely: (Wignjosoebroto, 2002) Components called structures, namely institutions created by the legal system such as district courts, administrative courts which have function to support the working of the legal system itself. These structural components enable the provision of legal services and work on an orderly basis. The substantive component is in the form of legal norms, be they regulations, decisions and so on, all of which are used by law enforcers and those who are regulated. The cultural component of law, namely consisting of ideas, attitudes, hopes and opinions about the law. This legal culture is differentiated between internal legal culture and external legal culture, namely the legal culture of society in general

C. Applied Theory: Progressive Legal Theory. This theory was formed by Chambliss and Seidman. In the theory of how the law works, there are 3 core factors for it to be implemented, namely normative juridical (law making institution), enforcement (law sanctioning institution), and sociological juridical (role occupant). (Wignjosoebroto, 2002) Law making institutions are regulatory institutions which

are given the authority by the community to make regulations that are in accordance with the values and norms of society, which when completed the regulations are made so that the role occupants are directed to act according to the regulations and order law sanctioning. institutions to apply regulations to role occupants and there is feedback from role occupants to provide input on regulations that will be made by the law making institution in order to form regulations as expected as well as KSP (social, political, cultural factors, etc.) also influences law making institutions in their social life experiences influencing the content of the regulations that are formed, also society in general which is different from the role occupants (targeted society) also influences input to law making institutions in forming regulations.

III. Gap Analysis and Problems

Some of the health problems in Indonesia, before Covid-19 occurred, which are currently widespread are BPJS problems, poor nutrition and maternal mortality. The resolution of this problem must of course be adjusted to the applicable laws and the 2020-2024 national medium-term development plan (RJPMN) which was prepared during the Jokowi-Ma'ruf Amin government era, in this second period.

Accountability for determining service rates as regulated in Minister of Health Regulation No. 69 of 2013 in conjunction with Minister of Health Regulation no. 59 of 2014 in conjunction with Minister of Health Regulation no. 56 of 2016 is a problem or problem in itself that researchers will reveal in this dissertation research problem. The difference in tariff values between hospital classes is very obvious which can cause gaps (deviations or discrepancies). There is a gap (deviation or discrepancy) in the practice of applying BPJS rates to different types of hospitals or not the same if the cases faced are the same, so that this policy has the impact of conflict of interests of price makers, the lack of BPJS's role as a strategic purchaser in providing input on the benefits of JKN, and fraud detection in the implementation of INA-CBG's which is still not optimal.

IV. State of Art

The researcher's suggestion in writing this research is that the Making Institution (DPR and President) must make rule breaking changes to medical regulations, regarding hospitals, and BPJS, the government must have the courage to emphasize that BPJS is obliged to carry out government functions (governing functions) in the field of public services (public services), and the Government must carry out "*Coding Reclassification*" and establish standard services for interventional and invasive heart procedures between PERKI and P2JK (Center for Health Financing and Insurance) of the Ministry of Health.

METHOD OF RESEARCH

This writing method uses a constructivist paradigm, namely a paradigm with a relativism ontology (Guba & Lincoln, 2009). The socio-legal approach method, namely an approach carried out by looking at the legal reality in society, namely data obtained from qualitative, so the data in the research is not in the form of numbers but in the form of information in the form of words -said, in this research, researchers used several data collection techniques, namely observation, interviews, interpretation of documents (text) and personal experience. The theoretical basis in this dissertation uses triadism law theory, responsive legal theory, and progressive legal theory. Research specifications are carried out descriptively analytically, namely a way of describing the condition of the object under study based on actual facts at this time (Arief, 1992) In this case, it is explaining and resolving the problem regarding the Reconstruction of BPJS Regulations on Tariffs for Types of Hospitals Based on Justice Values. Empirical research uses primary data collection, namely data obtained from observation, interviews, interpretation of documents (text) and personal experience. Empirical data itself can be divided into primary and secondary legal materials (ND & MH, 2019). To complete observations and interviews, field practice data was collected from seeing, hearing and paying attention to events that happened to BPJS participants or patients, hospitals and colleagues (fellow doctors), where the current researcher practices in type B and type C hospitals, as well as researchers who are members of the IDI organization. The data analysis method used to describe and process the data collected in this research is qualitative description. Qualitative descriptions are used in the method of describing data in this research because the main data used is not in the form of numbers that can be measured (Waluyo, 1991).

RESEARCH RESULT AND DISCUSSION

1. Regulatory Policies for Tariffs for Types of Hospitals Are Not Based on Justice Values

That the indicators show that the implementation which has been managed by a state-owned company, PT Persero, has not been going well. Viewed from a membership perspective, the Jamsostek program cannot be said to be successful. Just check, the number of workers who are active Social Security participants is only around 7.7 million people. In fact, the number of workers in the formal sector reaches 36 million people (ILO). This means that only a quarter of workers in the formal sector, who have written employment contracts, are active Jamsostek participants. In fact, in the Philippines and Thailand, during the same period, all workers in the formal sector became active participants, contributing regularly. The Health Insurance Program is even worse. To date, after 15 years of operation, only 1.3 million workers are registered with PT Jamsostek. Less than 5% of workers are in the formal sector.

As long as the management of Social Security is running well, it is impossible for employers to fail to register their workers. There are indications that distrust of management and services provided by Jamsostek influences employer delinquency. There is a lack of openness (transparency) in the management of Social Security. Indeed, the management of a PT does not have to be open to its clients. The PT (Limited Liability Company) plan is only open to shareholders where the majority shareholder has veto rights. No need to open client. The PT plan does not have members/participants (or the people in the form of a government plan). Other legal entity plans that have members/participants are associations or political parties. The PT plan is an exclusive ownership plan that is suitable for voluntary trading and buying and selling processes.

The National Social Security System, as stated in Law Number 40 of 2004 concerning the National Social Security System, is organized based on principles that are very different from market principles. These principles were formulated in the SJSN Law based on in-depth academic studies taking lessons from best practices in other countries. Principle of Mutual Cooperation. This principle is realized in a mutual cooperation mechanism from capable participants to less able participants, those at low risk helping those at high risk, and those who are healthy helping those who are sick. Market mechanisms, which are based on voluntary transactions and the free choices of each person, cannot possibly realize mutual cooperation. By nature, the market is selfish-individualistic. So social security transactions must be coercive or mandatory, the same as income tax transactions. Through this principle of mutual cooperation, social security can foster social justice for all Indonesian people. Only with this principle can universal coverage be achieved. The mandatory nature of this transaction has consequences that are not the same as carrying out ordinary business affairs. This principle is the basis for differences in the administration of business affairs or other government affairs. Nonprofit Principles. In Indonesia, the term non-profit is still widely misinterpreted. Often interpreted to mean there should be no surplus. Very wrong. What is more appropriate is not to provide benefits to some people. In English it is called not for profit. Not no-prift. This principle is a consequence of mandatory transactions. In voluntary transactions (market mechanisms), profits for some people are a requirement for achieving a market mechanism that produces quality products and competitive prices. In the SJSN Law, funds collected from transactions must be called Aana Amanat which will be used in the future with the main aim of fulfilling the greatest interests of participants, not providing profits to the organizing body. Therefore, non-profit performance indicators, like company indicators, must always be announced (at least to shareholders) every year. In the social security concept, apart from accumulated contributions, the investment results from contributions are also a Trust Fund. Investment results may not be recorded as corporate income, just as banks record interest on third party funds as bank income. Trust Funds have similar characteristics to APBN funds, except that these funds must be invested and interest services or development results become part of the Trust Fund. APBN funds may not be invested by government administrators or budget power users. Trust funds that have not been used, due to waiting for the participant to retire or become ill, must instead be invested so that these funds have maximum benefit for the participant. That is why the administration of social security is legally separated from the administration of government, so that there is flexibility in managing funds (Thabrany, 2009).

2. Weaknesses of BPJS Regulations on Fairness-Based Rates for Hospital Types

The National Social Security Council (DJSN) has monitored and evaluated the implementation of the JKN/KIS program held by BPJS in the first semester of 2016. As a result, DJSN found 8 problems with the National Health Insurance (JKN) and the Healthy Indonesia Card (KIS) that needed to be corrected. These eight problems have been considered part of the obstacles to the JKN/KIS program, namely the use of the Population Identification Number (NIK) as a requirement for registering JKN/KIS participants. This is regulated in BPJS Regulation no. 1 of 2014 and BPJS Circular Letter (SE) No. 17 of 2016.

The main problem of law enforcement lies in the factors that influence it. These factors are 1) legal factors, 2) law enforcement factors, 3) facility factors, 4) community factors and 5) cultural factors. (Friedman, 2020) In reality, laws continue to be born without the right solution. Laws always follow societal reactions or social reactions. Personal social forces in Indonesia are quite strong in putting pressure on the law, so that this condition creates a situation of reaction and panic. Evidence from the birth of several regulations regarding social health insurance shows reaction and panic. This fact is even very clear in various Covid 19 cases, which are increasingly causing unrest and are increasingly frightening and creating pressure on society.

In the world of medicine, we adhere more to the law of certainty, that is, we know it as exact law (definite logic). So there should not be any tug-of-war between various interests regarding the existence of public health insurance and BPJS. With the tug-of-war of interests and pluralism of laws and changing regulations, in reality this creates quite a sharp imbalance between the rights and obligations that must be borne by doctors, hospitals and stakeholders, and even society itself has to bear this inequality. In reality, this inequality is dominated by positions of power.

When the inequality of domination of power between the exponents of various legal systems remains persistent, then legal pluralism may become a myth or delusion, and the creation of legal uncertainty is not

impossible if legal pluralism opens up space for recognition for every other legal system outside state law without any restrictions clear. These two things at least provide a 'warning' to doctors and hospitals, that legal pluralism in the realm of regulation of public social health insurance and BPJS needs to be paid attention to and needs to receive sharp criticism. So that this does not cause an imbalance in rights and obligations for the duties of authority in the field of medical law, in particular the implementation of community social health insurance and BPJS. And it has become part of a tug-of-war that is indicated to cause various obstacles. Among these obstacles, researchers can highlight organizational, operational, and personal and managerial.

3. Efforts to Reconstruct BPJS Regulations on Tariffs for Types of Hospitals Based on Justice Values

The National Social Security Council (DJSN) has carried out monitoring and evaluation of the implementation of the JKN/KIS program, the JKN (National Health Insurance) system implemented in Indonesia adheres to a prospective payment method known as casemix (case-based payment) and has been implemented since 2008 as payment method for the Community Health Insurance program (JAMKESMAS). The casemix system is a disease classification system that groups diagnoses and procedures by referring to similar clinical characteristics with similar treatment resources/costs during hospitalization. The rapid development of medical technology, especially in interventional and invasive cardiac procedures, is a challenge in ensuring these needs are translated into existing casemix systems.

In its implementation, the payment pattern to advanced level health facilities refers to the INA-CBGs system. INA-CBGs is a payment system with a "package" system, which is based on the disease suffered by the patient. Hospitals will receive payment based on the INA CBGs rate which is the average cost spent by a diagnosis group. The diagnosis groups in the INA CBGs system refer to the diagnosis groups from ICD-10 issued by WHO.

Hospitals must be wiser in managing their finances using the INA CBGs pattern, because the rates may appear small because there are some actions that are not cost-effective or there are still actions that do not need to be carried out on patients who take up quite a large portion of the costs from the package. The expected benefit of INA CBGs is objective cost certainty so that it can improve the quality and services of the hospital itself in accordance with developments in clinical management needs. It is hoped that adjustments to existing tariffs in the INA CBGs system will improve higher quality services to patients in line with developments in clinical services.

There are also several inputs related to the INA CBGs tariff financing system for interventional and invasive heart procedures initiated by FGD participants, including: Re-evaluate rates for interventional and invasive heart procedures every year by P2JK Ministry of Health. To support this, hospital cost transparency is needed so that there are no incidents of under-reporting and miscalculation.

Consider cost sharing with patients or financing cooperation with other third parties with the aim of minimizing the existing deficit. An appeal to every medical association to make interventional and invasive heart procedures a basic service standard that will be used as a reference for financing by JKN. Heart disease topped the list as the disease with the largest inpatient costs in 2018. Among the various types of heart disease, interventional and invasive heart procedures still face many challenges in providing optimal standards of therapy for JKN patients. Various problems encountered in the field related to the implementation of coding and claims affect service performance and financing deficits at the hospital or health facility level. The main problems that need to be addressed are gaps in coding ability, compatibility of INACBG grouping with hospital service standards, and standardization of financing for interventional and invasive cardiac procedures.

Therefore, a recommendation has been formulated to immediately provide education and disseminate the coding manual for interventional and invasive cardiac procedures in the form of roadshows to big cities in Indonesia. This main recommendation will also be followed by various other additional recommendations such as a national strategy for financing interventional and invasive cardiac procedures, a partnership program to increase verifier competency; and partnerships to optimize services for interventional and invasive cardiac procedures as an effort to increase survival rates for interventional cardiac patients.

CONCLUSION

The development of social security for all people not yet based on social justice values. What is clear can be found in the implementation of BPJS which still differentiates tariff classes and influences services based on social justice values, the obstacles to BPJS services in the application of tariffs to hospitals of different types at this time are legal factors, law enforcement, means or facilities, the community. , cultural, organizational, operational, personal and managerial, and quality control efforts and making efforts to control costs in implementing BPJS tariffs based on justice values.

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