

# The Urgency of Optimization of Financial Services Authority Supervision against Social Security Governing Body of Health

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## ABSTRACT

Social Security Governing Body of Health or BPJS is one of the agencies established by the government to provide health insurance to every Indonesian citizen. In implementation BPJS there are many problems such as patients BPJS get discrimination, there are some cases of rejection by some hospitals that harming the patients of BPJS. Financial Services Authority which is the body authorized to conduct supervision of BPJS needs to perform optimization of supervision. Based on this matter in this study discussed: How the authority of the Financial Services Authority in conducting supervision of the BPJS regarding juridical? What is the urgency of optimization the supervision of Financial Services Authority over BPJS? This research is normative juridical research by analyzing the sources of law, books, thesis and other sources related to this research. The results of this study are Financial Services Authority has the authority to exercise control over BPJS. This is by the substance contained in the OJK Regulation Number 5/POJK.05/2013. In this case, the OJK has a role to monitor either directly or indirectly. Also, OJK is also authorized to conduct a review of the protection of BPJS recipients to access health facilities. The second, urgency of optimization of Financial Services Authority supervision against BPJS is because there have been various cases of discrimination against the BPJS patients. This raises discontent and difficulty for the community to access health facilities. It is contrary to national and international law.

**Keywords:** BPJS, Financial Services Authority, Patients

## INTRODUCTION

The right to health is the rights of every human being that has been guaranteed and regulated in various international and national law instruments. The provisions therein essentially formulated as individual rights and health set in concrete that the State as a party which has responsibility for health (Bulletin Kontras, 1). The right to health in international law instruments can be found in Article 25 Universal Declaration of Human Rights, Article 12 of the International Covenant on Economic, Social and Culture, Article 12 Convention on the Elimination of All Forms of Discrimination

against Women, and Article 24 of the Convention on the Rights of Children

In Indonesia there is a right to acquire health that have been guaranteed and protected, one of which is contained in Article 28 H of Paragraph (1) of the Constitution of the Republic of Indonesia which affirms that everyone has the right to obtaining health care and in Article 34 Paragraph (3) which affirms that the states responsible for the provision of health care facilities and public service facilities.

Therefore, the government through the Social Security Governing Body or called as BPJS seeks to provide security against the health of the citizens of

Indonesia through the Social Security Governing Body of Health as social security. National social security is state programs which aim to provide certainty of protection and social welfare for all (The Consideration of Law No 24 of 2011).

Furthermore, the awareness about the importance of security against social protection continues to evolve as a mandate on changes to the Constitution of the Republic of Indonesia especially Section 34 Paragraph 2 that affirms the State develop a social security system for all citizens. With the inclusion of social security system in the Constitution, the publication of Law Number 40 of 2004 about the National Social Security System became strong evidence that the government and stakeholders have major commitments to realize the social welfare of citizens.

Through National Social Security System as one form of social protection, in fact, aims to guarantee the entire people to meet the basic needs of their life. Therefore, the government is organizing some form of social security in the health sector, such as through PT Askes (Persero) and PT Jamsostek (Persero) that serving civil servants, the recipients, veterans, and employees private. For the poor people, the government gives the assurance through Public Health Assurance scheme and Region Health Assurance (Filu Marwati 2014:5).

Nevertheless, the schemes are still fragmented and divided. Health costs and quality of service be difficult under control. To overcome it, in 2004 the government issued Law No. 40 of 2004 about national social security System or called as SJSN which mandate that the mandatory social security for the entire population including National Health Insurance or JKN through BPJS (Filu Marwati 2014:5).

BPJS itself has a responsibility to provide social security to all the people of Indonesia through the national social security system. The national social security system is a state program that aims to provide certainty of protection and social

welfare for citizens (The Consideration of Law No 24 of 2011).

It is manifested in the form of social security. Social security is the protection afforded by the community for its members to risks or certain events with the purpose to avoid such events that can resulted in loss or decline in most of the revenue, and to provide medical services and financial guarantees or against the economic consequences of the occurrence of such events, as well as family allowances and a guarantee for the child (Zaeni Asyhadie, 2007:33).

The participants of BPJS has the right to obtain health care in the hospital which cooperation with the BPJS. But recently there are cases of neglect patients of BPJS holder. One of these is Reny Wahyuni case's as a mother who would give birth to a baby, but the newborn died after six hospitals in Bekasi refused. The reason for denial of the hospital at Bekasi is the pretexts of the room of Intensive Care Unit are full (Poskota News, June 12, 2017).

Also, there are some other issues such as the decline in medical or non-medical services, private practice physicians rarely receive the patients of BPJS, unavailability of treatment rooms for patients on the UGD and the refusal of BPJS Emergency and medical patients referrals are still suspended (Filu Marwati 2014:18).

It is very detrimental to the consumers especially BPJS patients who have the right to health services which have been guaranteed by the State. Therefore, the need for optimal surveillance and protection of BPJS patient. OJK as one of the Agency's authority to conduct surveillance as provided in Section (2) of paragraph (2) point (i) of POJK, the supervision of Financial Services Authority should have more optimal for tackling these problems.

These problems make the researcher interested in doing an analysis: how the Financial Services Authority has an authority to conduct surveillance against social security governing body or BPJS? What is the urgency of optimizing the

supervision of Financial Services Authority in exercising supervision over BPJS as a focus on this research.

### **Research Methods**

This research uses normative legal research method that refers to the legal norms contained in legislation (Soerjono Soekanto and Sri Mamudji, 2004). Normative legal research is conducted through document studies on the laws and regulations, conventions, books, journals, theses and dissertations as well as other materials related to this research. The materials are then analyzed by the researcher.

### **RESULTS AND DISCUSSIONS**

#### **1. The Authorities of Financial Services Authority to Conduct Surveillance Against Social Security Governing Body of Health or BPJS**

Law No. 24 of 2011 affirms that national social security organized by the BPJS, which consists of the BPJS of health and BPJS of employment. Especially for the National Health Insurance or JKN held by the BPJS, the implementation began on January 1, 2014. Operationally, the implementation of JKN poured in government regulations and regulations of the President, among others: Government Regulation No. 101 of 2012 about Tuition Assistance Recipients, A Presidential Regulation No. 12 of 2013 about health coverage and Roadmap for National Health Insurance (Asih Eka Putri, 2012: 240).

Definitively BPJS is a legal entity created by statute to hold a social security program that allows forming a new organization of the agency by the dynamics of the development of social security (Asih Eka Putri, 2017: 7). BPJS benefited health coverage in the form of health services that are preventive, curative and rehabilitative medicine services, including health and medical consumables materials that needed in the health service (Hanum Rahmaniar, 2015: iii).

To improve the health status of the community including the underprivileged

communities, several hospitals that have cooperated with BPJS are willing to serve BPJS patients by the provisions set in Law No. 40 of 2004 about National Social Security System. However, as far as the observations are cited in several studies, in many health centers and hospitals, the implementation of BPJS is still in shambles. The whole place of health services becomes too many patients and makes the long line (Filu Marwati, 2014: 6). The worse conditions are there are participants of BPJS, which was previously a transfer of civil servant asks get less than the maximum service. Another fact that needs to be highlighted is about the availability of medicines in the hospital. There was a case where the hospital only gave some medicine from a prescription made by a doctor, while the remaining remedy had to be purchased at a private pharmacy. Some of the above phenomena indirectly illustrate that the implementation of BPJS has not been fully good and still reap some problems (Filu Marwati, 2014: 6).

Furthermore, these problems are still repeatedly so very harmful to the holder of BPJS. Also, the mechanisms for resolving such cases are also rarely known to the public, resulting in obscurity to the provision of health-care coverage by their rights.

Though their rights have been guaranteed by the law. BPJS patients have a right as expressed by John F. Kennedy before Congress on March 15, 1962, consisted of (Ryan Bagus, 2016: 20):

- a. Right to security.
- b. Right to vote.
- c. Right to get information.
- d. Rights to heard.

The four rights are the part of Declaration of Human Rights declared in the United Nations on December 10, 1948, which is contained in Articles 3, 8, 19, 21 and Article 26. Also, health care is an absolute right for every BPJS Health participant. The health service includes all first-class health facilities and advanced

health facilities, other health facilities established by the Minister in cooperation with BPJS Health including supporting health facilities consisting of:

- a. Laboratory.
- b. Hospital Pharmacy installation.
- c. Pharmacy.
- d. Blood transfusion unit.
- e. Optics.
- f. Provider of consumable ambulatory peritoneal dialysis, and
- g. Practice midwives/nurses or the equivalent of it.

Based on the above, the patient holding BPJS have the same access to other patients, with the record still by the provisions of the legislation. Furthermore, there are several things that are guaranteed by BPJS, which is contained in Article 47 Paragraph (3) of BPJS No. 1 of 2014 about the implementation of the Health Insurance affirms that health service guaranteed by BPJS consists of:

- a. Health services at first-rate health facilities;
- b. Health services at advanced health facilities;
- c. Emergency services;
- d. Medicine services, medical devices, and medical consumables;
- e. Ambulance services;
- f. Health screening services; and
- g. Other health services stipulated by the Minister;

This provision has enough accommodated patient holding BPJS access to health service if in fact fulfilled properly. Furthermore, from the juridical perspective, the right of the patient is also basically encouraged by some other rules. For example is Law No. 29 of 2004 about Medical Practice which also aims to protect patients. Patient rights are regulated in Article 52 of Law No. 29 of 2004 which affirms that:

- a. Obtain a complete explanation of the action of medic as referred to in Article 45 point (3);
- b. Ask for the opinion of a doctor or other physician;

- c. Obtain services according to medical needs;
- d. Refuse medical treatment;
- e. Obtain medical record content.

Furthermore, there are other regulations that protect the rights of patients, which are also listed in Article 32 of Law No 44 of 2009 about hospital, that is:

- a. Obtain information on the hospital's rules and regulations;
- b. Obtain information about the rights and obligations of the patient;
- c. Obtain a humane, fair, honest, and non-discriminatory service;
- d. Obtain quality health services by professional standards and standards of operational procedures;
- e. Obtain effective and efficient services so that patients avoid physical and material harm;
- f. Filing a complaint on the quality of service obtained;
- g. Choosing a doctor and class of care by his wishes and regulations in the hospital;
- h. Request consultation about the illness they have suffered from other doctors who have a Practice License both in inside and outside the hospital;
- i. Obtain the privacy and confidentiality of illness including medical data;
- j. Obtain information covering the diagnosis and procedure of medical action, the purpose of medical action, alternative actions, risks and possible complications, and the prognosis of the action taken and the estimated cost of treatment;
- k. Approving or rejecting the action that the health worker will take on their illness;
- l. Accompanied by their family in critical condition;
- m. Conducting worship according to the religion or beliefs held during it does not interfere with other patients;
- n. Obtaining security and safety during hospitalization;
- o. Submitting suggestions, improvements to the hospital's treatment of themselves;

- p. Refusing the ministry of spiritual guidance that is inconsistent with the religion and beliefs it embraces;
- q. Sue or prosecute the hospital if the hospital is suspected of providing services that are inconsistent with standards, whether civil or criminal; and
- r. Complaining Hospital services that are not by service standards through print and electronic media by the provisions of the legislation.

If we refer to some rules that give assurance to the rights of patients, basically the regulation has provided good and universal legal protection so that should if it is done properly then there is no discrimination in the provision of BPJS services.

Based on the rights that have been described above to the fulfillment of health insurance and some problems that exist in the implementation, the Financial Services Authority as an institution that has the authority to conduct supervision should have directly participated in overseeing BPJS service activities as stated in OJK Regulation Number: 5/ POJK.05/2013 about the Supervision of the Social Security Governing Body of Health by the Financial Services Authority. In Article 2 Paragraph (1) and (2) the POJK affirms that:

- (1) OJK supervises BPJS
- (2) The scope of OJK oversight of BPJS as referred to in paragraph (1) includes:
  - a. financial health;
  - b. implementation of good governance including business processes;
  - c. management and investment performance;
  - d. implementation of risk management and good control;
  - e. financial fraud detection and settlement;
  - f. valuation of assets and liabilities;
  - g. compliance with laws and regulations;
  - h. disclosure of public information (public disclosure);
  - i. consumer protection;
  - j. collectability ratio of contributions;
  - k. monitoring of systemic impacts; and

- l. other aspects which are the functions, duties, and authority of OJK based on legislation

Based on these provisions, OJK has the authority to conduct supervision on the implementation of BPJS which one of them is to protect consumers. Consumer protection here is also related to the services provided to some health facilities to BPJS cardholders.

Also, OJK also has the authority to conduct direct supervision on BPJS as mentioned in Article 3 Point (1) letter (a) of OJK Regulation Number 05 is conducted through Inspection namely by the procedure as follows:

- a. The examination of BPJS is done by the examiner.
- b. In the course of the examination, the examiner may examine another company owned by BPJS and other related parties.
- c. The examination aims to; get an idea of the actual condition of BPJS; ensure that BPJS has complied with laws and regulations; ensure that BPJS has implemented good governance, risk management, and control; and or ensure that BPJS has made efforts to fulfill its obligations to participants.

Furthermore, indirect insight as referred to in Article 3 paragraph (1) letter b of OJK Regulation Number 05 of 2013 is done through:

- a. Analysis of reports submitted by BPJS to OJK; or
- b. Analysis of reports submitted by other parties to OJK.

In addition to Article 3 Paragraph (1) of the POJK concerning BPJS, it is emphasized that OJK supervision of BPJS as referred to in Article 2 Paragraph (1) consists of direct supervision and indirect supervision. Based on this matter, it is clear that OJK has the authority to supervise BPJS implementation either directly or indirectly.

Based on the objectives of the examination as referred, it can be clarified that OJK has the authority to examine BPJS

directly or indirectly one of them to ensure the right BPJS receiver has been implemented properly and BPJS has made efforts to fulfill the obligation.

Furthermore BPJS also one of the forms of insurance, in which all citizens of Indonesia is required to participate in this program. In joining this program, the participants of BPJS are divided into two groups, namely for the society that is capable and the underprivileged community groups. While dealing with insurance companies in Indonesia against the interests of social security then OJK has two important points in implementing its functions namely:

**a. Setting Function**

OJK has the authority to enact legislation invite, establish law enforcement rules, establish regulations on oversight in the financial services sector, may establish the policy on the execution of OJK's duties, may stipulate regulations on the procedures for stipulating written orders to financial service institutions and certain parties, may stipulate regulations on the procedures for stipulating statutory managers in Financial Services Institutions, may establish organizational structure and infrastructure, and manage, maintain and administering assets and liabilities and also may establish regulations on the procedure of imposing sanctions in accordance with the provisions of the Laws and Regulations in the Financial Services sector.

**b. Oversight function**

OJK supervises the BPJS to realize a transparent, sustainable and socially responsible social security program that protects the public interest. For this purpose to be achieved, a supervisory system is required that may indicate the potential failure of the BPJS in advance. Such indications can be obtained accurately if the OJK obtains sufficient information regarding the conditions of the BPJS that can be obtained through direct supervision and indirect supervision.

2. **The Urgency of Optimization of Financial Services Authority Supervision Against Social Security Governing Body of Health**

Health service is an important factor in medical care for consumer health services. Therefore it is important for the medical personnel to provide health services by health care quality standards. The definition of health quality services is a lot of expert reviews. One of the complexities of health care is the assessment of the quality of care. The scope of this is too broad, ranging from the possibility of a degree of perfection, the technique of clinical intervention to the role in reducing mortality (Tjandra Yoga., 2002: 174).

Based on these, the law must be a cornerstone of health services for the public and can be used as reference benchmarks to assess the quality of care. Quality of care and access to health is of paramount importance in the fulfillment of the right to health. The right to health is contained in the constitution especially in Article 28 H Paragraph (1) which affirms that "Every person shall have the right to live a prosperous and spiritual life, to live and to obtain a healthy and healthy living environment and to be entitled to health care."

In addition to Article 34 Paragraph (3) of the constitution also affirms that "The State is responsible for the provision of health service facilities and appropriate public service facilities. Furthermore, Law No 23 of 1992 about health also regulates the same things which affirm that "everyone has equal rights in obtaining an optimal degree of health." So there should be no discrimination in the provision of health services by the hospital (Irfan Ridha, 2016: 351).

Furthermore, in Article 5 is also affirms "everyone is obliged to participate in maintaining and improving personal health, family, and environment." Another article which provides health insurance is Article 65 which states that: "the administration of health efforts is

financed by the government and or the community.

Based on these provisions, the BPJS provides a guarantee to every citizen to access health facilities. BPJS is very helpful for the health insurance for the community, especially the poor people because BPJS of Health is implemented for all Indonesian people. But in reality, there are still many obstacles in the service of BPJS (Vabella Mira, 2018: 3-4).

Since the beginning of 2014 BPJS has started in Indonesia, there are many complaints which occur in society. Whether regarding service or regarding migration from Askes users to users of BPJS. Although the use of BPJS is more universal or comprehensive for all citizens, it turns out the ease of convenience that "promised" seems not to be enjoyed by the society. Whether those who previously used Askes and Jamsostek, as well as among people who use Jamkesmas and ordinary people (Filu Marwati, 2014, 7-8).

Also, in 2015 many researches finding that there are many cases of BPJS participants are plundered under the pretext of full care space, less equipment and others (Irfan Ridha, 2016, 2016: 351). Also, there are several problems such as:

- a. Differences or discrimination of services provided by the hospital between the patient BPJS with general patients or other BPJS patients.
- b. The services provided by doctors and nurses are not satisfied because doctors and nurses are not friendly.
- c. The services provided by the hospital staff are slow and unresponsive so that the procedures passed by the community become complicated and seem to be distracted.
- d. Cessation of service for patients BPJS for seven months due to limited drug stock. Therefore, there are patients of BPJS protest against the service to health access which is a partner of BPJS.
- e. Lack of facilities and infrastructure and medical support equipment for BPJS patient (Vabella Mira, 2018: 2-3).

Furthermore, it is still found that inappropriate services are given to patients with BPJS owners when compared to other patients. Services provided very slowly and often they even neglect patients who use BPJS. Delayed handling performed by medical personnel can make the illness suffered by BPJS patients (Vabella Mira, 2016: 352).

Another problem is BPJS in running the program has not reaped optimal results as expected by the Indonesian government as a legal entity that organizes the National Health Insurance. An example of such a case is the denial of health services resulting in the death of a BPJS holding patients on the grounds of a full room by Sumberejo Regional Hospital located in Bojonegoro City, East Java (Ryan Bagus, 2016: 18).

The above problems are indefinable because they are very harmful to the patient and are contrary to national and international laws. Therefore, the State needs to be present in the form of supervision to ensure there is no discrimination against BPJS patients because they have equal rights in accessing health facilities. OJK as one of the institutions that have the authority to conduct supervision, it should optimize the supervision to avoid such discrimination.

## CONCLUSION

1. The Financial Services Authority has the authority to exercise control over the Social Security Governing Body of Health or BPJS. This is by the substance contained in the OJK Regulation Number 5/POJK.05/2013. In this case, the OJK has a role to monitor either directly or indirectly. Also, OJK is also authorized to conduct a review of the protection of BPJS recipients to access health facilities.
2. The urgency of optimization of financial services authority supervision against social security governing the body of health is because there have been various cases of discrimination against the recipient or BPJS patients. This

raises discontent and difficulty for the community to access health facilities that often lead to death. It is also contrary to national and international law. Therefore OJK needs to perform optimization of supervision on BPJS.

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