



Efforts of the Social Security Administration (BPJS) to Regulate the Granting of Patient Rights in the Health Referral Service System

Sulastri Hasan Lauris^{1*}, Fence M. Wantu^{2*}, Nur Mohammad Kasim^{3*}

Universitas Negeri Gorontalo

sulastrihanlauris@gmail.com, fence.wantu@yahoo.co.id, nurkasim@ung.ac.id

ABSTRACT

This article aims to examine in depth the role and efforts of the Social Security Administration Agency (BPJS) in ensuring the rights of patients in the health referral service system. Using a normative or doctrinal legal research approach, this article identifies significant legal gaps regarding patient freedom of choice and consent to information technology-based management of personal medical data. The absence of adequate arrangements can lead to legal uncertainty and losses for the patient and the health facilities involved. Therefore, this article proposes a reformulation of the relevant articles, which specifically regulate the rights of patients in the health referral system, including the right to freedom of choice, consent to the provision of data and information, as well as the obligations of patients in the completion of technology-based medical data. This reformulation is expected to improve the quality of services, improve legal protection for patients, and create a more responsive and efficient referral system for all stakeholders.

Keywords: Social Security Administration Agency (BPJS), regulation, granting rights.

1. Background

Welfare is one of the ideals in the welfare of the people of Indonesia, one of which can be seen from the public services provided by the government as one of the parties responsible for the country.¹ Health is a public service that must be provided by the government which is classified as a basic needs service.² Health in the Constitution of the Republic of Indonesia in 1945 as the highest legal basis of Indonesia states Article 28 H paragraph (1) that:

"Everyone has the right to live a prosperous life physically and mentally, to live, and get a good and healthy living environment and the right to obtain health services and the state is obliged to provide them".

Health should be considered more by the government as a form of Practice Act 1945. A prosperous country can be described by the life of a free society and human resources that have an impact on the progress and development of a country. Health is one of the human rights that must be given by the government.³ It is expressly stated in Law No. 39 of 1999 on Human Rights Article 3 Paragraph (2) which states: "Everyone has the right to recognition, guarantee, protection and fair legal treatment and receive legal certainty and equal treatment before the law"

Furthermore, Article 8 states that: "the protection, promotion, enforcement, and fulfillment of human rights are primarily the responsibility of the government". Developed a concept of the rule of Law pioneered by Albert Veen Dicey as the rule of law. this concept emphasizes on three main elements of the rule of law, namely: (1) the rule of Law ; (2) equality before the law ; and (3) the guarantee of human rights.⁴

Health services until now are still being improved both related to regulations and their application in the field by related parties. The implementation of health efforts includes physical, mental health, including intelligence and social. Health efforts are carried out at the level of efforts in accordance with medical and health needs.⁵

¹ Harahap, T. K., Prayuti, Y., Latiainingsih, N., Damanik, A., Maheni, T., Farida, I., & Muhtar, M. H. *Mustaqim*. (2023). *PENGANTAR ILMU HUKUM*. Penerbit Tahta Media.

² Sipahutar, Hotnir. (2021). *Efektivitas Inovasi Kebijakan Pelayanan Publik Di Indonesia*. Jakarta: Indocamp. P.38

³ Rs, I. R., Muhtar, M. H., Harun, A. A., Bakung, D. A., & Junus, N. (2023). Protection of Human Rights Against the Environment in the Indonesian Legal System. *Journal of Law and Sustainable Development*, 11(10), e570-e570.

⁴ Renggono Ruslan & Ruslan, Dyah Aulia Rachma. (2021). *Hak Asasi Manusia Dalam Perspektif Hukum Nasional*. Makassar: Kencana. P. 4

⁵ Prapitasari Ruly & Jalilah, Nurul Hidayatun. (2020). *Konsep Dasar Mutu Pelayanan Kesehatan*. Tarakan: CV. Adanu Abimata. P. 286

The basic requirements of health services are available and sustainable, acceptable and reasonable, accessible, accessible, and quality. Group health services have the main purpose of promotive, preventive, curative and rehabilitative with the target of individuals or families and communities in health care efforts in health facilities, especially hospitals and health workers who are professional and competent.⁶

Based on the National Social Security System (SJSN) law, the Social Security Administration Agency (BPJS) was established in law No. 24 of 2011 and further explained that the Social Security Administration Agency abbreviated as BPJS is a legal entity formed to organize social security programs.⁷

The Social Security Administration (BPJS) itself to support its functions and duties in the provision of health services can cooperate with health facilities such as health centers, hospitals and clinics. In Law No. 24 of 2011 Chapter XIII Article 51 paragraph (1) states that :“in order to improve the quality of the implementation of Social Security programs, BPJS cooperate with government agencies”.

The hospital as one of the health institutions in the government also has rights and obligations that must be carried out including as stated in Law Number 17 of 2023 concerning health in Article 191 letter c where one of the rights of the hospital is to cooperate with other parties in developing services. and Article 189 letter j is implementing a referral system. Fulfillment of health services with the provision of Social Security in this case is run by the BPJS often can not answer complaints in the community about the health care coverage they will receive.⁸

There are still many complaints of health referral system services to BPJS participants that can harm patients and health facilities into empirical facts, as the results of searches conducted by the media solopos.com that many BPJS health participants do not get referrals to Wonogiri hospital because referrals to health facilities often do not appear in the system used by BPJS. According to Supriyanto, the condition is quite strange, because of all the hospitals in Wonogiri, RSUD is the most superior hospital. It appears from the type, Human Resources (HR), and complete medical equipment compared to other hospitals.⁹ Likewise, the Regent of Paser-Balikpapan, in his meeting with the head of BPJS Balikpapan branch, he questioned the BPJS Balikpapan Branch regarding the distribution of services with zones because often people have to go back and forth to get referrals even if possible there is ease for patients to choose the desired doctor.¹⁰

The act of providing inappropriate health services is known as an act that violates Law Number 17 of 2023 on health, one of which is in Article 276 letter C that patients have the right to get health services in accordance with medical needs, professional standards, and quality services. Affirmed in Law No. 8 of 1999 on consumer protection that consumer protection aims to include “increasing the empowerment of consumers in choosing, determining, and demanding their rights as consumers”.¹¹

Law enforcement is an important effort to protect and prevent harm to consumer rights. Legal protection of consumers is an obligation that must be implemented by the state as a constitutional right of citizens to obtain legal protection, legal certainty and Justice. Without legal protection, certainty and justice for consumers, it can lead to legal conflicts between consumers and producers, because there are parties who feel disadvantaged.¹² SF Marbun asserted that the state based on the law must be based on good and fair laws. A good law is a democratic law, which is based on the will of the people in accordance with the legal consciousness of the people, while a fair law is a law that is appropriate and fulfills the purpose and purpose of every law, including in the field of Health.¹³

The case experienced in the midst of this community illustrates that the patient's rights are still neglected, the services received are not in accordance with regulations and there are still many complaints of people who feel much harmed time and material to do treatment even though one hopes to get treatment using BPJS services so that they can be served easily and quickly.

⁶Vita Setya Permatahati, dkk, “Analisis Yuridis Sistem Pelayanan BPJS Kesehatan dalam Meningkatkan Kepercayaan Peserta BPJS: Studi Kasus DiBPJS Kesehatan Surakarta”*Jurnal Relasi Publik* Volume 1 Nomor 3, (2023): 95

⁷BPJS Kesehatan. Profil-Sejarah BPJS Kesehatan. Diakses pada tanggal 18 september 2023. <https://www.bpjs-kesehatan.go.id/#/profil?tab=sejarah..>

⁸ Abdussamad, Z., Muhtar, M. H., & Bakung, D. A. (2022). Legal Model for Fulfilling Educational Rights for Persons with Disabilities in the Covid-19 Pandemic Era. *KnE Social Sciences*, 317-325.

⁹ Muhammad D. Praditia dan Suharsih. (09 November 2023). Sistem Rujukan BPJS Kesehatan Di Wonogiri Bermasalah, DPRD Gelar Hearing. [Diakses pada tanggal 01 Maret 2024, https://soloraya.solopos.com/sistem-rujukan-bpjs-kesehatan-di-wonogiri-bermasalah-dprd-gelar-hearing-1790840.](https://soloraya.solopos.com/sistem-rujukan-bpjs-kesehatan-di-wonogiri-bermasalah-dprd-gelar-hearing-1790840)

¹⁰Dina Fitri. (09 Februari 2023). Terkait Mapping Rujukan Pasien Bupati Paser Duduk Bersama BPJS Cabang Balikpapan. [Diakses pada tanggal 01 Maret 2024. https://humas.paserkab.go.id/berita/terkait-mapping-rujukan-pasien-bupati-paser-duduk-bersama-bpjs-cabang-balikpapan-.](https://humas.paserkab.go.id/berita/terkait-mapping-rujukan-pasien-bupati-paser-duduk-bersama-bpjs-cabang-balikpapan-)

¹¹ Dungga, W. A., Muhtar, M. H., & Djaafar, L. (2023). The Assessment of Indonesia's Religious Courts in Resolving Shari'ah Banking Disputes According to the Principles of Justice. *Manchester Journal of Transnational Islamic Law & Practice*, 19(3), 179.

¹²Syaharie Jaang, “Analisis Perlindungan Hukum Terhadap Konsumen Berdasarkan Prinsip Keadilan,”*Jurnal Hukum dan HAM Wara Sains* Volume 2 Nomor 5, (2023): 351

¹³SF Marbun. (2019). *Peradilan Administrasi dan Upaya Administratif di Indonesia*. Yogyakarta: Liberty. P 8

II. Formulation Of The Problem

How are the efforts of the Social Security Administration (BPJS) to regulate the granting of patient rights in the Health Referral Service System?

III. Research Methods

The research used is normative legal research. Normative legal research is essentially doctrinal legal research or theoretical legal research. So called, because the normative research is focused on Written studies that use secondary data such as using legislation, Court decisions, legal theory, legal principles, legal principles, and can be the results of scientific work of scholars (doctrine).¹⁴

The formulation of the problem regarding the efforts of the Social Security Administration (BPJS) in regulating the rights of patients in the health referral service system is answered through an analysis of the existing legal framework and implementation practices in the field. This article identifies that the constraints experienced by patients, such as limited freedom in choosing referral services and lack of consent regarding the management of information technology-based medical data, indicate a legal vacuum that needs to be addressed. This constraint has caused public dissatisfaction with BPJS services, especially in the referral system that is expected to function effectively and efficiently in Ensuring Patient Rights.

This article examines various applicable regulations, including Law No. 24 of 2011 on BPJS and regulations related to the referral system in the regulation of the Minister of Health. The articles in this regulation emphasize the importance of cooperation between BPJS and health institutions, but still do not specifically regulate the freedom of patients in choosing services or in agreeing to the use of personal data. To answer this problem, the study offers a legal reformulation that includes the right to freedom of choice, the right to consent in data management, as well as the obligation to update medical data based on information technology. This reformulation is proposed in order to provide legal certainty for patients and improve the quality of referral services in the National Health Insurance program (JKN).

Through normative legal research that focuses on doctrine studies, this article shows that the need for BPJS regulatory reform is urgent. This reform is expected to address complaints that arise in the community and create a more fair and transparent referral system, so as to provide adequate legal protection for all patients.

IV. Discussion

In discussing the problems of the health referral service system, it is important to first understand the basic theories or concepts regarding health services and patient rights in the Social Security System. In the context of the rule of law, health care is a human right guaranteed by the state, in accordance with the mandate of the Indonesian constitution contained in Article 28h paragraph (1) of the 1945 Constitution. This article states that every citizen has the right to good health as part of the social welfare that must be guaranteed by the state. This is reinforced by law No. 36 of 2009 on Health, which states that the government has an obligation to provide equitable and quality health services to the entire community, including through health insurance programs that aim to protect the public from health risks that could lead to economic difficulties.¹⁵

The concept of referral health services itself is closely related to the principles of accessibility and efficiency in health services. Referral system is a system that regulates the delegation of duties and responsibilities of health services from simpler health facilities to more complex facilities or have better technical capabilities. This includes vertical cooperation between levels of health facilities, such as Puskesmas as first level health facilities (FKTP) to large hospitals that act as advanced health facilities (FKTL). In the regulation of the Minister of health of the Republic of Indonesia number 001 of 2012 on the referral system for individual health services, it is explained that referrals are made in stages based on the medical needs of patients and the capacity of related health facilities, to ensure that patients receive the most appropriate services according to their health conditions.¹⁶

In addition, patients' rights in the healthcare system, including the right to choose services and give consent, are important aspects of medical ethics and health law. The right of the patient reflects the concept of autonomy in Health Ethics, in which each individual has the right to determine decisions related to his health care, including access to clear information and consent in the management of personal data. Recognition of this right is becoming increasingly important in the digital age, where health data is often digitally managed and stored in information technology-based systems. Law No. 8 of 1999 on Consumer Protection adds the perspective that as consumers of health services, patients are also entitled to the protection of their consumer rights, including the right to quality service and the right to security of their personal data.¹⁷

¹⁴ Irwansyah. (2021). *Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel Edisi Revisi*. Makassar: Mirra Buana Media. P. 98

¹⁵ Muhtar, M. H., Pedrasan, R., & Harryarsana, I. G. K. B. (2023). Human Rights Constitution on Health Protection of Indonesian Citizens. *Russian Law Journal*, 11(2), 149-160.

¹⁶ Abdussamad, Z., Harun, A. A., Muhtar, M. H., Puluhalawa, F. U., Swarianata, V., & Elfikri, N. F. (2024). Constitutional balance: Synchronizing energy and environmental policies with socio-economic mandates. In *E3S Web of Conferences* (Vol. 506, p. 06006). EDP Sciences.

¹⁷ Bakung, D. A. H., Muhtar, M. H., & Amer, N. (2022). Comparative analysis of legal policies regarding force major during Covid-19 pandemic in Indonesia and China. *Batulis Civil Law Review*, 3(1), 8-18.

In Indonesia, the concept of referral health services is implemented through the Social Security Administration Agency (BPJS) established under law No. 24 of 2011 on BPJS. BPJS, as a legal entity, is responsible for organizing a health insurance program that includes a referral system as one of its main elements. However, obstacles that often arise in the health referral system at BPJS, such as lack of flexibility in choosing referral facilities, indicate the need for improved regulation and a firmer legal framework.¹⁸ Therefore, understanding the concept of patient rights, the social security system, and the basic principles of fair and equitable health care becomes an important foundation before entering into the discussion of specific problems that arise in the health referral service system in Indonesia. The Health Referral Service System is sometimes a problem that often arises in the midst of society, especially related to the rights and obligations that can prosper the community, especially those who are patients in available health facilities.

Some problems that occur, especially in the first level of Health Facilities (FKTP) and advanced health facilities (FKTL). Especially in government hospitals that are often in the spotlight in the community because this hospital is a referral hospital or advanced health facility level service (FKTL) which means that the layman's view of good service, medical equipment to human resources health is the most complete and adequate and will be the first choice for people who are sick to get treatment.

The implementation of the National Health Insurance program (JKN) must be supported by good cooperation between the government and health service providers. This is also stated in the BPJS Law Article 51 paragraph (1) which states that : "in order to improve the quality of the implementation of Social Security programs, BPJS cooperates with government agencies"

The Individual Health Service referral system is regulated in the regulation of the Minister of health of the Republic of Indonesia number 001 of 2012. Chapter 3 explains that :¹⁹

"Health Service referral system is a health service organization that regulates the delegation of duties and responsibilities of Health Services reciprocally, both vertically and horizontally."

The provisions as referred to in Paragraph (1), Paragraph (2), Paragraph (3), and Paragraph (4) are excluded in emergency, disaster, specificity of patient health problems, and geographical considerations. Furthermore, the reference procedures contained in the Permenkes are in Article 7 to Article 17. As for them, Article 12, Article 13, and Article 14 explain as follows. Article 12 states that the referral must obtain the consent of the patient and/or his family. The approval is given after the patient and / or his family get an explanation from the authorized health personnel. The explanation should at least include the diagnosis and therapy as well as the necessary medical measures, the reasons and purposes for which the referral is made, the risks that can arise if the referral is not made, the transportation of the referral, and the risks or difficulties that can arise during the trip.

Article 13 provides that before making a referral, the referrer must carry out first aid and/or stabilization measures of the patient's condition according to medical indications as well as in accordance with the capabilities for the purpose of patient safety during the implementation of the referral. In addition, the referrer must communicate with the referrer and ensure that the referrer can receive patients in an emergency, as well as make a referral cover letter to be delivered to the referrer. Article 14 states that in the communication referred to in Article 13 letter b, the referral recipient is obliged to inform about the availability of facilities and infrastructure as well as the competence and availability of health workers, as well as provide medical consideration of the patient's condition.

The articles mentioned above very clearly regulate the structure and can even be used as guidelines by both the BPJS system and health human resources in health facilities. It aims to minimize errors in granting rights to Social Security participant patients so that they can be served effectively and efficiently. The three articles are also very important to be re-evaluated related to the many problems in society and become a spotlight to pay attention to Patient Protection. This protection is also a guideline in the implementation of law enforcement in the community, ensuring that the rights of patients are well protected.

The articles in the regulation of the Minister of Health No. 001 of 2012 became an important basis in regulating the relationship between health facilities of different levels. Tiered health services implemented in Indonesia, in accordance with Article 4, aims to organize the delegation of duties from FKTP to FKTL efficiently, in order to ensure that the services provided are in line with the patient's medical needs and the level of competence of available health facilities.

Although this regulation has outlined a clear structure and referral flow, the reality is that there are often obstacles in implementation, especially in terms of accessibility, availability of services, and fulfillment of patient rights. FKTL, like referral hospitals, is often the first choice of the community because of the perception that the facility has more complete facilities, medical devices, and medical personnel than FKTP. However, limited capacity and mismatch between regulations and field conditions create an imbalance in the distribution of patients and services that can result in the accumulation of patients in FKTL, while FKTP becomes underutilized. This shows that the constraints in the BPJS referral system are not only technical problems but also related to public perception and uneven service quality at every level of health facilities.

Furthermore, an analysis of Articles 12, 13, and 14 in the regulation of the Minister of Health revealed that there are provisions regarding patient consent, stabilization measures, and communication between referrers and referees. Although this regulation aims to ensure that patient rights are protected and

¹⁸ Bakung, D. A., Pham, T. N., & Muhtar, M. H. (2024). Disparity in the Doctrine of Promissory Estoppel between Indonesia, the Philippines and the United Kingdom. *Journal of Law and Legal Reform*, 5(1), 267-304.

¹⁹Pasal 3 Peraturan Menteri Kesehatan RI Nomor 001 Tahun 2012 Tentang Sistem Rujukan Pelayanan Kesehatan Perseorangan. Berita Negara RI Tahun 2012 Nomor 122

patient safety is maintained in the referral process, in reality there are many complaints from the public regarding patient rights that have not been fully met, especially in emergency situations or special needs. For example, patient consent as stipulated in Article 12 paragraphs (1) to (3), which requires a full explanation from health workers, is often difficult to apply optimally in the field due to time constraints in emergency situations, which ultimately affects the quality and safety of referral services.

Article 13, which provides for the referrer's obligation to provide first aid and ensure the patient's stable condition before being referred, highlights the responsibilities that health workers in the FKTP must fulfill. In the field, the implementation of this article is still experiencing obstacles, especially related to the readiness of human resources and medical facilities that are not always adequate at the FKTP level. This situation often causes the patient to have to be referred to the FKTL without going through the ideal stabilization, increasing the risk of complications during the course of the referral. In addition, the communication constraints set out in Article 14 between referrers and referees can hinder coordination in emergency cases, especially if the intended referral facility does not have adequate resources available. This shows that the regulation related to referral communication, although it has been structured, still faces challenges in the field in achieving synchronization between referring and receiving patients.

From the perspective of patient protection, it is also important to consider the principle of patient autonomy, including the right to obtain information and give consent to any medical action that will be undertaken. Existing regulations provide for this right explicitly, but its implementation requires more than just Legal Regulation. An adaptive system is needed that is able to deal with the needs of the patient individually, so that the patient's rights are actually fulfilled in practice. Geographical conditions and disparities in the quality of health services in various regions are also factors that influence the successful implementation of this tiered referral system. For example, areas far from FKTL often experience obstacles in access and travel time, which makes the implementation of referrals less than optimal and can endanger patient safety.

Furthermore, the Civil Code regulates several articles related to patient protection, including articles 1320, 1338, 1365, 1366 and 1367, which are emphasized in Article 1365 and Article 1366 as follows.

Article 1365 which states that : "every act that violates the law and brings harm to others, obliges the person who caused the harm through his fault to replace the loss."

Then Article 1366 which states that : "everyone is responsible, not only for losses caused by deeds, but also for losses caused by negligence or frivolity."

The law is implemented in order to provide protection for the community by the actions of the government as the holder of power and policy makers so that there is a sense of security. As according to Satjipto Raharjo, legal protection is to provide protection to human rights that are harmed by others and such protection is given to the community so that they can enjoy all the rights granted by law.²⁰

Furthermore, the law on the Individual Health Referral Service System itself only regulates the technical implementation of the referral system along with the relevant rules. Then look at the absence of efforts from the BPJS in evaluating the real so that it is possible to be able to make changes to the law on the Social Security Administration (BPJS).

Article 1366 of the Civil Code underlines the principle of liability, which includes not only directly unlawful acts, but also the consequences of negligence or frivolity. This provision confirms that legal responsibility is not only a matter of active actions that cause harm, but also the obligation not to be negligent in carrying out duties and obligations that can have an impact on other parties. In the context of health services, this principle is very relevant, especially in terms of the responsibilities of BPJS and health facilities involved in the referral process. Negligence in providing proper services, or in properly carrying out referral procedures, can have implications for the rights of the violated patient, giving rise to the basis for the patient to demand accountability.

The theory of legal protection put forward by Satjipto Raharjo supports the idea that the law should function as a protector of people's rights, including in health services. The legal protection idealized here includes guarantees of security, justice, and legal certainty for the community²¹ who utilize the services of BPJS. The government, as the authority that has the power and responsibility to ensure the welfare of the people, needs to ensure that all existing rules can provide a sense of security for the public in accessing health services. In this case, BPJS must play an active role in carrying out its obligations not only as a service provider, but also as a protector of the rights of patients who use the service.

Although the law on the Individual Health Referral Service System has established technical rules related to the implementation of the referral system, it turns out that there are still many problems in practice that are not anticipated in the regulation. The legal vacuum related to BPJS responsibility in evaluating the implementation of referral services is also an important highlight. The absence of provisions requiring BPJS to evaluate effectiveness and constraints in the referral system creates a gap between policy and real needs on the ground. This indicates the need for changes and adjustments in law No. 24 of 2011 on BPJS, so that BPJS has a firmer obligation to monitor and overcome problems in referral services experienced by the community.

Reformulation of BPJS regulations that include periodic evaluation obligations and the development of an adaptive referral system is needed. Thus, BPJS can be more responsive to patient complaints and able to improve the quality of health services on an ongoing basis. This evaluation should also be

²⁰Sudrajat Tedi, Wijaya, *Op.cit.*, P. 96

²¹ Yassine, C., Ahmad, A., Muhtar, M. H., Rivera, K. M., & Putri, V. S. (2024). Admissibility of lawsuits based on interest under Algerian civil and administrative procedures. *Jambura Law Review*, 6(2), 286-303.

supported by mechanisms that allow patients to submit their complaints as well as procedures to deal with these complaints in a transparent and efficient manner. With more concrete changes in legislation, the referral service system can be optimized to meet patients' rights, reduce the risk of negligence, and increase the sense of security in accessing state-provided health services.

V. Conclusion

The government and the Social Security Administration (BPJS) are seen as important in establishing cooperation and mutual participation in providing health insurance services. Seeing that there has been no real effort in amending Law Number 24 of 2011 concerning BPJS, the submission of the reformulation article in this law is important to add a separate article related to the rights and obligations of participants which include the right to freedom of choice, the right to approve the provision of data and information related to diseases, and the obligations of participants in completing information technology-based medical data. This reformulation aims to be able to answer all complaints and problems in the field both by patients and health facilities to avoid material losses to related parties.

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