

THE ROLE OF GOVERNMENT IN FULFILLING THE RIGHTS TO HEALTH SERVICES FOR CITIZENS THROUGH BPJS KESEHATAN

By: Dr. Hj. Endang Kusuma Astuti, S.H., M.Hum.
Chairwoman of Master of Law Study Program UNDARIS
Ungaran, Semarang, Indonesia
E-mail: endang_kusuma@yahoo.com

ABSTRACT

This study examines the role of government in fulfilling the rights to health services for citizens through BPJS Kesehatan. The background of this study is that on one hand, the Constitution requires the fulfillment of human rights in the health services, namely the right to health services, while on the other hand, they have not been fully fulfilled, especially for the poor. The problem in this research is the extent to which the role of government to fulfill the rights to health services through BPJS Kesehatan for Indonesian citizen and whether the factors hampering the implementation of BPJS Kesehatan for the citizens. This research was done in Jakarta. This research used socio legal approach. The research findings are the role of the government to realize the rights to health services through BPJS Kesehatan for Indonesian Citizens. Factors inhibiting the implementation of BPJS Kesehatan for the people, such as, the problem of high cost of health services and drugs, membership, complexity, service quality, referral, public awareness campaign of BPJS Program, and Jamkesmas are not covered in BPJS participants.

Keywords: Role of Government, Rights to Health Services, BPJS.

A. INTRODUCTION

Health is a necessity for everyone, therefore when a person feels unwell then the person will try to seek treatment to recover his health. Some of them who feel pain will contact a hospital or other health facilities for treatment. Not everyone can afford health services because health services are not cheap. Some people, especially the poor citizen, have difficulties in accessing it. The basic principle of health development in Indonesia is formulated based on the 1945

Constitution, namely article 28, which states that health is the fundamental right of every citizen.

The same thing is also found in the Constitution of World Health Organization (WHO) in 1948. Law No. 36 of 2009 on Health also states that health is a Human Rights and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as referred to in Pancasila and the 1945 Constitution.

In order to ensure the fulfillment of human rights in the field of health development,¹ the government then organizes a social security system for the people of Indonesia, namely by establishing the Social Security Administrator (Badan Penyelenggara Jaminan Sosial, referred to as BPJS), under the Law No. 24 Year 2011, effective on January 1, 2014.²

Based on the Law Number 24 Year 2011 regarding BPJS, the State-Owned Enterprises (SOEs) that become social security providers consist of:

- a. PT ASKES (Persero), a State-Owned Enterprise specially assigned by the government to provide health care insurance for Civil Servants, Pensioners of PNS and TNI / POLRI, Veterans, Pioneers of Independence and their families and other Business Entities.
- b. PT ASABRI (Asuransi Sosial Angkatan Bersenjata Republik Indonesia) (Persero), a state-owned company engaged in Social Insurance and special pension payments for TNI Soldiers, civil servants Ministry of

Defense of the Republic of Indonesia and POLRI (Police Force).

- c. PT JAMSOSTEK (Jaminan Sosial Tenaga Kerja), a public program that provides protection for workers to address certain socio-economic risks which implemented by social insurance mechanisms.
- d. PT TASPEN (Persero) (Dana Tabungan dan Asuransi Pegawai Negeri), an Indonesian State-Owned Enterprise which is engaged in retirement savings and pension plan for Civil Servants.

These four BUMNs are private legal entities established under the provisions of Law No. 19 Year 2003 on State-Owned Enterprises which are subject to the provisions set forth in Law Number 40 Year 2007 regarding Limited Liability Company. The mission undertaken by the organization of BPJS refers to legislation governing social security programs for various groups of workers.

Although the current social security programs are regulated under different legislation, the four SOEs share the same mission: organizing a social security

¹ Ekowati Retnaningsih. *Akses Layanan Kesehatan*, First Edition, Raja Grafindo Persada, Jakarta, 2013

² Evieta Fadjar. *Jaminan Kesehatan Nasional Belum Dipahami*. 2014. Available from <https://nasional.tempo.co/read/564668/jaminan-kesehatan-nasional-belum-dipahami/full&view=ok> Accessed Oct 20 2017 19.00

program to encourage employee morale. The law on BPJS has determined that PT JAMSOSTEK will transform into BPJS Ketenagakerjaan and PT ASKES (Persero) to transform into BPJS Kesehatan.

The JAMSOSTEK program is conducted with consideration not only to provide job security, but also to enhance a positive impact on efforts to improve discipline and labor productivity. The JAMSOSTEK program is organized to provide basic protection to meet minimum living needs for the workforce and their families, as well as to reward workers who have contributed their hard work and mind to the companies they work for. Similarly, the ASKES Program and TASPEN Program, the implementation of both social security programs for civil servants is an incentive aimed at increasing the excitement of work. The ASABRI program is part of the rights of soldiers and members of the POLRI (Police Force) on a reasonable income.

Based on the types of social security programs, social security programs can be short-term, where social security programs can be directly enjoyed by the participants, for example health insurance

programs and occupational accidents, as well as long-term programs such as pension / retirement program, which can be enjoyed after a period of being a participant. Therefore, social security becomes the main pillar in realizing the prosperity of a nation.³

Social security is viewed from the perspective of human rights, where human rights constitute a set of rights inherent in nature, so one of the rights inherent in the protection of human dignity and prestige is the right to social security. It shall be protected, respected and upheld by the nation, law, government and every individual.

The Universal Declaration of Human Rights of the United Nations of 1948, Article 22 and Article 25, states that "every person, as a member of society, has the right to social security in the case of unemployment, sickness, disability, widowhood, old age."

Article 3 of Law Number 36 Year 2009 concerning Health which states that "Health development aims to increase awareness, willingness, and ability to live healthy for every person in order to achieve the highest level of public health,

³ Achmad Subianto, Sistem Jaminan Sosial Nasional Pilar Penyangga Perekonomian Bangsa, Gibon Books, Jakarta, 2011, p. 36

as an investment for human resource development that productive socially and economically";

Article 20 of Law Number 36 Year 2009 concerning Health, which states that "The Government is responsible for the implementation of public health insurance through the national social security system for individual health efforts; Implementation of the social security system as referred to in paragraph (1) shall be implemented in accordance with the provisions of legislation.

Based on the background of this research stated above, issues to be discussed are:

1. To what extent is the role of the Government in fulfilling the rights to health services through BPJS Kesehatan for Indonesian Citizens?
2. What are the factors impeding the implementation of BPJS Kesehatan for the community?

B. RESEARCH METHOD

This research used socio-legal approach. Policy holders associated with BPJS Kesehatan in Jakarta was selected as the population, which were sampled by purposive sampling. Data were collected

by using deep interview and observation. Collected data was then processed by editing, coding, categorizing, and tabulating. Data reduction, presentation and verification were done before, during, and after field data collecting to build a comprehensive analysis.

C. DISCUSSION

1. The Role of Government to Achieve the Right to Health Service Through BPJS Kesehatan For Indonesian Citizens

Definition of Human Rights in accordance with Article 1 number 1 of Law no. 39 Year 1999 concerning Human Rights is: "a set of rights inherent in the nature and existence of human beings as creatures of God Almighty and is a gift that must be respected, upheld and protected by the state, law and Government, and everyone, for the sake of honor and protection of human dignity and prestige."

Based on the definition of human rights, it is concluded that human rights are the inherent and fundamental human rights as a gift of God that must be respected, upheld and protected by every individual, society or country. Thus the nature of respect and protection of human rights is to maintain the safety of

human existence as a whole through the action of equilibrium that is the balance between the rights and obligations, as well as the balance between the interests of individuals and the public interest in respecting, protecting and upholding human rights, becomes the duty and responsibility between individuals, governments, even countries.

So in fulfilling and demanding rights can not be separated from the fulfillment of obligations that must be implemented. Similarly, in the interests of the individual, it shall not impair the interests of the people (the public interest). Therefore, the fulfillment, protection and respect for human rights must be followed by the obligations of human and human rights principles in private, community, and state life. Based on some formulation of Human Rights (Human Rights) above, it can be drawn a conclusion about some basic characteristics of human rights;

a. Human rights need not be given, inherited or purchased. Human rights are part of the human being automatically.

b. Human rights apply to all people regardless of species
c. Human rights can not be violated by anyone. In this case no one has the right to violate and limit the rights of others⁴

With regard to human rights in the constitution, Sukardi said that the fundamental thing for human rights protection in the rule of law is set forth in the constitution, because the history of the birth of the rule of law is to protect the rights of its citizens. Chapter X of the 1945 Constitution provides for human rights, as outlined in 10 (ten) articles. This shows the existence of the state of Indonesia in upholding the existence of human rights.⁵

The protection of human rights in the constitution is a reflection of the highest recognition of a state of human value, therefore as fundamental of law the constitution becomes the main basis of human rights protection in a country.

The rights of citizens, article 26 of the 1945 Constitution "to be citizens is the indigenous Indonesian people and other nations passed by law as citizens (paragraph 1), and the requirements of

⁴ Heri Herdiawanto dan Jumanta Hamdayama. Cerdas, Kritis, dan Aktif berwarganegara (Pendidikan Kewarganegaraan untuk Perguruan Tinggi), Penerbit Erlangga, Jakarta, 2010

⁵ Adam Mushshi, 2015, Teologi Konstitusi Hukum Hak Asasi Manusia Atas Kebebasan Beragama di Indonesia, Penerbit LKIS Pelangi Aksara, Jakarta, 2015, p. 20

citizenship are stipulated by law."(Paragraph 2). Article 27 is concerning equality in law and decent living for humanity. The purpose of a country as described above explicitly gives the authorities and obligations to the State to realize human rights for its citizens

The rights to health do not mean the rights of everyone to be healthy, or the Government must provide an expensive means of health care beyond the capacity of the government. But it is more demanding that government and public officials can make various policies and work plans that lead to the availability and affordability of health care facilities for all in the shortest time possible. In Article 12 paragraph (1) the International Covenant on Economic, Social and Cultural Rights (ICESCR) the right to health is defined as "the right of everyone to enjoy the highest attainable standard of physical and mental health" and excludes the area of health care.

On the contrary, from the history of grammatical design and meaning of article 12, paragraph 2, which stated that the steps to be taken by the States Parties to

the present covenant to achieve the full realization of this right shall include the things necessary to pursue:

- a. Provisions for reducing the rate of stillbirth and death of children and the development of healthy children;
- b. Improvement of all aspects of environmental and industrial health;
- c. Prevention, treatment and control of all infectious, endemic, occupational-related diseases;
- d. Creation of conditions that will guarantee all medical care and care in the event of a person's illness.

So the rights to health cover a wide area of economic and social factors that affects the creation of conditions in which people can attain a healthy life, including health determinants such as food and nutrition, shelter, access to safe drinking water and sanitation adequate, healthy and safe working conditions and a healthy environment.⁶

Between Human Rights and Health there is a relationship that affects each other. Often the result of human rights abuses is a disruption to health and vice versa, violation of the right to health is also a violation of human rights. There are

⁶ International Covenant on Economic, Social and Cultural Right (ICESCR), 1966. [diunduh 18 Oktober 2014]. Available from: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>

also some aspects that can not be directed independently in the relationship between the State and the Individual. In particular, good health can not be guaranteed by the State, nor does the State provide protection against any possible cause of human illness. Therefore, genetic factors, individual susceptibility to disease and the adoption of unhealthy or risky lifestyles, have a very important role to a person's health. Thus, the Right to Health should be understood as the right to the fulfillment of various facilities, services and conditions necessary for the realization of adequate and affordable health standards.

The notion of health is very broad and is a subjective concept, and is influenced by various factors, such as geographical, cultural and socioeconomic factors. It is therefore difficult to determine what is included in the right to health. For that reason, UN experts, activists and agencies are trying to detail the core content of the right to health. Core content consists of a set of elements that must be guaranteed by the state under any circumstances, without considering the availability of resources, consisting of:

a. Maternal and child health care, including family planning;

- b. Immunization;
- c. Appropriate measures for common diseases and accidents;
- d. Provision of essential drugs.

Definition of Public Health Insurance (Jaminan Kesehatan Masyarakat, referred to as Jamkesmas) is a social assistance program for health services for poor and disadvantaged nationally, through cross subsidies in order to realize comprehensive health services. Efforts to implement Jamkesmas are the realization of the fulfillment of people's right to health and the mandate of Law No. 40 Year 2004 concerning National Social Security System (Sistem Jaminan Sosial Nasional, referred to as SJSN), and is one of the government's commitment in health development in Indonesia. However, because until now the implementing regulations and institutions that have to be established based on Law No. 40 Year 2004 concerning SJSN have not yet been established, the Ministry of Health issues health insurance program policies for the poor as a form of fulfillment of people's right to health. Implementation of the policy of Jamkesmas is set forth in the Minister of Health Decree Number 125 / Menkes / SK / II / 2008 concerning Guidelines for

Implementation of Public Health Insurance Program.

The implementation of the Jamkesmas program is implemented as a mandate of Article 28 H paragraph (1) of the Constitution of the Republic of Indonesia, stating that "*Every person has the right to live a safe and healthy.*" In addition, Article 34 Paragraph (3) of the Constitution of the Republic of Indonesia stated that 'the State is responsible for the provision of appropriate health service facilities and public service facilities.

The government recognizes that the people, especially the poor, find it difficult to get access to health services. The condition is worsening due to the high cost of health services, resulting in certain groups of people having difficulty accessing health services. To fulfill the people's right to health, the Government, in this case the Ministry of Health, has allocated social assistance funds for the health sector which is used as financing for the community, especially the poor.

The legal basis for the implementation of Jamkesmas program are Law Number 40 Year 2004 concerning Social Security System, Law Number 45 Year 2007 concerning State Budget 2008, Law Number 1 Year 2004 concerning State

Treasury, Law Number 17 Year 2003 concerning State Finances

The inherent rights are basic rights such as the right to life, the right to freedom, the right to own something. The grouping of basic human rights such as the right to life, the right of equality and freedom, freedom of thought and expression, freedom of assembly, religious rights, economic rights, the right to health services, and the right to the enjoyment of human rights in health services.

The Universal Declaration of Human Rights of the United Nations in Article 22 of the right to social security states that every person, as a member of society, is entitled to social security and is entitled to the implementation of the economic, social and cultural rights indispensable to his personal dignity and growth, through his efforts national and international cooperation, and in accordance with the arrangements and resources of each country.

Everyone is also entitled to information on his or her health data including the actions and medications he has received or will receive from current health professionals. The government has issued policies related to the fulfillment of

community health rights, namely BPJS Kesehatan & BPJS Ketenagakerjaan.

BPJS as a form of health insurance guarantee of citizens of Indonesia, there can be no more people who do not get health care for reasons of cost. BPJS has been effective in 2014. But in fact, there are still many cases that neglect the rights of the community in health services.

The result of Law No. 39 Year 2009 concerning Health and Law No. 40 Year 2011 concerning SJSN is the state's efforts in the field of legislation in ensuring the fulfillment of the right to health of the whole population. Law No. 39 Year 2009 concerning Health guarantees the right of every individual in the field of health manifested in the provision of Article 4 in the law 'Everyone has the right to health'.

In the end, each individual is guaranteed the right to obtain equal access and appropriate and affordable services in the field of health. Furthermore, each individual is also guaranteed in obtaining a healthy environment in order to achieve optimal health status. The law also includes government responsibilities. In this section, the government is ultimately responsible for the availability of services, the availability of access to information

and facilities, the availability of equal resources, and the pursuit of feasibility and affordability in the health sector. Furthermore, the government is also responsible for the implementation of health insurance through national social security system for every citizen.

In addition, this law provides a minimum healthcare limit of 5% of APBN and 10% of APBD and this fund is prioritized for public interest at least 2/3 of the budget. In the case of the protection of the right to health, the law will also provide criminal penalties for the offending parties in the health sector.

Since January 1, 2014, the Government stipulates the National Health Insurance that is implemented by BPJS Kesehatan as a statement of Article 5 of Law No. 40 Year 2004 concerning SJSN. The SJSN Law formulates the Health Insurance Program with the basic principle in article 19 paragraphs 1 which is based on the principle of social insurance and the principle of equity. The principle of social insurance is mutual cooperation between capable citizens with disadvantaged citizens and healthy citizens with sick people. Membership is mandatory so that all citizens can be protected. Nonprofit principle, meaning

funds collected from contributions will be used for mutual benefits and citizens. Finally, the principles of openness, prudence, accountability, efficiency, and effectiveness in terms of management of JKN funds.

Meanwhile, the principle of equity is the similarity in obtaining services in accordance with medical needs unrelated to the amount of contributions already paid. This principle is manifested by the payment of contributions of a certain percentage of wages for those who have income and the government pays contributions for those who can not afford.

2. Factors inhibiting the Implementation of BPJS Kesehatan for Citizens

Factors inhibiting the implementation of BPJS Health found in this research are limited services covered, there are still health facilities that have not cooperated with BPJS, there are still poor people who have not yet registered as recipients of contributions (penerima bantuan iuran (PBI), and BPJS service procedures that are considered complicated by participants.

The limitation of services is because the financing system of BPJS is a package

system called INA-CBGs, where health facilities are paid by the BPJS with predetermined average tariff rate according to the patient diagnosis. However, the tariff is considered to be insufficient, so the services provided are limited so as not to exceed the specified tariff. On the other hand, BPJS Kesehatan has a budget deficit, making it difficult to increase INA-CBG rates.⁷

There are still health facilities that have not cooperated with BPJS for various reasons, such as those health facilities not meeting the requirements given by BPJS. There are also poor people who have not been registered as recipients of contribution assistance (PBI) due to poor people not being recorded because they do not have a permanent place to live.

Service procedures with BPJS are still felt complicated by participants, especially regarding the referral procedure. One example is the referral procedure for nearsightedness. Patients from first-level health facilities are referred first to the optics that cooperates with BPJS, where patients are measured minus the lens. The patient is then returned to the first level health facility,

⁷ www.kontras.org. BPJS Kesehatan dalam Perspektif HAM, diakses tanggal 18 Agustus 2017. Jam 20.30

and then referred to the hospital for lens measurements and only to get a prescription to get glasses.

D. CONCLUSION

The government in their duty to fulfill the rights to health facilities regulates BPJS Kesehatan through Law no. 24 year 2011 concerning BPJS. The SJSN Law formulates the Health Insurance Program which is based on the principle of social insurance in the form of mutual cooperation between capable citizens with disadvantaged citizens and healthy citizens with sick people and the principle of equity that is the similarity in obtaining services in accordance with their medical needs, unrelated to the amount of contributions already paid.

Factors inhibiting the implementation of BPJS Health include limited services, there are still health facilities that have not cooperated with BPJS, there are still poor people who have not been recipients of contributions, and BPJS service procedures that are considered complicated by participants.

Suggestions that can be given by the author include the need to simplify the procedure of health services covered by BPJS Kesehatan so as to facilitate the public to access these services. In addition, the government also needs to always control and evaluate the performance and financial condition of BPJS, so that people still get services that are appropriate to their illness.

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BIOGRAPHY

Dr. Hj. Endang Kusuma Astuti, S.H M.Hum. was born in Semarang on August 19, 1958. She passed her Bachelor of Law from the Faculty of Law UNTAG Semarang in 1992, graduated from Masters of Law Gajah Mada University in 1996, and passed her Doctoral Program at the Faculty of Law UNDIP in 2003. From 1997 until now she works as Associate Professor at the Faculty of Law UNDARIS. She has served as Deputy Dean II and become member of Research and Community Service Institutions in UNDARIS. She has also served as Rector in UNDARIS and now as the Chairwoman of the Magistracy of Law UNDARIS. She also teaches at other tertiary institutions, including Masters in Health Law UNTAG Semarang, Masters in Applied Health Sciences at Diponegoro University, Masters in Health Law Sebelas Maret University Surakarta. She is also an external examiner in the Doctorate Program of Law in Diponegoro University and Sebelas Maret University Surakarta. She is also active in organizations, including as members of law and legislation commission in Indonesian Ulema Council (Majelis Ulama Indonesia (MUI)) of Central Java and as members of Indonesian Advocates Association (Perhimpunan Advokat Indonesia (PERADI))

