

JUSTICE REPOSITIONING IN THE LEGAL POLITICS OF HEALTH INSURANCE

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ABSTRACT

In its development the Law Number 40 of 2004 was the realization of the constitutional mandate to realize justice in the field of health insurance in this country. However, the implementation of Law Number 40 of 2004 has many problems, one of which is the existence of BPJS's debt to hospitals which has an impact on the constipation of justice in medical care for the poor in Indonesia. This article which uses a sociological juridical approach will further discuss the implementation of the politics of health insurance law that has not yet brought justice to Indonesian society today. So as to be able to briefly provide input related to the implementation of equitable health insurance law politics.

Keywords: Repositioning, Justice Value, Legal Politics, Health Insurance

A. Introduction

In its development, Law No. 40 of 2004 the National Social Security System is a form of government responsibility in realizing welfare for the Indonesian people which has been mandated clearly in the fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia. 40 of 2004 the National Social Security System is not easy, many regulatory and operational technical tools must be prepared clearly, measured and planned so that they can be implemented well and on target. So that in 2019 the goal of achieving Universal health coverage can be realized to have proper health insurance for participants. There are no more reports that people who are less able are rejected by hospitals and cannot be treated for reasons of not being able, people who want to seek treatment get maximum service when they are treated at the hospital.

Problems in society are increasingly becoming complex, considering that before the National Health Insurance Policy existed, the pattern of legal relations that existed was only the Hospital-Patient pattern. At present, with the existence of public policy which has become

the applicable law in Indonesia as stated above, the pattern of legal relations has become the pattern of three-party legal relations. It said three parties, and even more so, because it involved a third party, namely the Health Insurance Provider, the Government, both the Central Government and the Regional Government, which by law was required to support the National Health Insurance program.

In general, what the Hospital complained of in the Hospital-BPJS-Patient legal relationship pattern, namely the accumulation of unpaid or said debts that have the potential to cause potential losses to the Hospital, while to support its management, as stated above Hospital needs huge funds and investment to maintain the sustainability of its management and services to the community, in this case being more specific, namely the patient.

Related to the problem of piling up accounts receivable that must be claimed from the BPJS, resulting in patients having difficulty receiving the services they certainly need. It has become a habit in the community that there are still poor patients who are rejected by the Hospital because they do not have the cost of paying hospital services. It has been explained previously that the consequences of not serving patients, especially patients from the poor, have caused violations of the mandate of the Constitution and the laws and regulations that are derived from the Constitution.

The presence of BPJS in its development has not been able to overcome the problems as stated above as well. This is because in addition to the BPJS there are also institutions, namely third parties who help in the health services that already exist, and have a strong and established status in serving some of the previous groups of people. As a result, BPJS patients must "fight for mercy" with patients participating in institutions other than BPJS, including patients from insurance companies that are rich and very capable of paying for hospital services.

Then the Government through the Health BPJS has the obligation to pay for health facilities for services provided to participants by having to pay at the latest:

- a. the 15th (fifteenth) of each current month for first-level Health Facilities using pre-effort payment based on capitation;
- b. 15 (fifteen) working days since the claims document outside the capitation is received in full for the first-level Health Facility and other Health Facilities; and
- c. 15 (fifteen) working days since the claim document is received in full for an advanced level referral health facility

The Health PJS must pay compensation to the Health Facility of 1% (one percent) of the amount payable for every 1 (one) month delay. The fact that the implementation of supporting inequality in health services assisted by third parties so far can be shown explicitly in the formulation of the National Social Security System Act states that there are four state-owned companies in the insurance sector namely PT Jamsostek (Persero), PT Taspen (Persero), PT Asabri (Persero), and PT Askes (Persero), are still serving part of the people before finally they will be transformed into BPJS. Regarding BPJS Health institutions, the BPJS Law clearly states that PT Askes (Persero) will transform into BPJS Health. Furthermore, all health insurance programs organized by the Ministry of Health, the Ministry of Defense, the Indonesian Armed Forces, the Indonesian National Police, PT Jamsostek (Persero), and PT Askes (Persero) will be taken over by the Health BPJS.

The Road Map Towards National Health Insurance 2012-2019 states that in 2014, the Government targeted 121.6 million residents to be given health insurance by the Health BPJS. That means there are still millions more patients who cannot be served by BPJS. The number is assumed to come from the Jamkesmas program as many as 96.4 million people, participants managed by PT Askes (Persero) have 17.2 million people, Social Security Assurance (JPK) participants as many as 5.5 million people, and from participants of the Guarantee Program General Public Health (PJKMU) from local governments totaling 2.5 million. Only in 2019 to come, the Government is targeting the entire community, as many as 257.5 million people will be guaranteed by BPJS Health. Of course what is meant by the concept of "guarantee", namely that later in 2019 there will be no more members of the community, including the poor people who are BPJS participants will be refused to be given health services by the Hospital, either openly or directly, or indirectly. Regarding the explanation, it is necessary to further discuss the issue of "Repositioning Justice in the Politics of Health Insurance Law."

B. Issues To Be Discussed

The issues discussed in this paper are related to the issue of implementing the health insurance law politics that has not been able to realize justice.

C. Method Used

The approach used in the writing of this journal is the sociological juridical approach, in which the discussion method used sees the law as not only limited to the perspective of legality, but also looks at the sociological aspects that develop in society.

D. Discussion

The development of the times has also had an impact on people's lives in various aspects, this change not infrequently brings new problems including those related to the welfare problems of each individual community that exists. This welfare problem does not only occur in one aspect of community life partially, but also occurs in various dimensions of community life, including the issue of health insurance. Starting from this, it is only natural that parties who are an extension of the state in the field of health are also capable of being responsible for ensuring the health of every group without exception. The enactment of Law Number 40 of 2004 concerning the National Social Security System, the Indonesian people already have a Social Security system for all Indonesian people. To realize the objectives of the national social security system, it is necessary to establish an organizing body in the form of a public legal entity based on the principles of mutual cooperation, non-profit, openness, prudence, accountability, portability, mandatory participation, trust funds, and the results of the management of Social Security Funds used entirely for program development and as much as possible for the interests of Participants. As mandated by Law Number 40 of 2004 concerning the National Social Security System, a Social Security organizing body was formed through Law Number 24 of 2011 concerning the Social Security Organizing Body.

With this Act 2 (two) BPJS are established, namely BPJS Health and BPJS Employment. BPJS Health began operating in organizing the Health Insurance Program on January 1, 2014 and is an institutional transformation of PT Askes (Persero). The goal of the Health BPJS is to achieve universal membership according to the road map to National Health Insurance in 2019.

BPJS Health Vision that is the Coverage of 2019 No later than January 1, 2019, all Indonesian citizens have national health insurance to obtain health care benefits and protection in meeting their basic health needs organized by a reliable, superior and trusted BPJS Health. With good and overall good governance (Good Governance). Health Social Security Organizing Agency, hereinafter abbreviated BPJS Health is a legal entity formed to organize a health insurance program.

Philosophically or in terms of nature (the nature), the role of hospitals as representatives of the government and the state in providing services to Patients of the Social Security Organizing Agency (BPJS) in Indonesia is a legal claim or dictation that is derivative or a derivative claim from the visionary ideas of the law more general and abstract. When carrying out its role the Hospital is a representative of the government and the state based on the mandate of the Pancasila whose complete formulation can be found in the Constitution.

The mandate of the Constitution can be seen in the Preamble formulation or the Preamble of the 1945 Constitution of the State of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) ¹. It was formulated there that:

Then from that to form an Indonesian Government that protects all of the Indonesian people and all of Indonesia's blood spilled and to promote public welfare, educate the nation's life, and participate in carrying out world order based on independence, lasting peace and social justice, the Indonesian National Independence was drafted. that ... ²

The mandate of the Preamble or the Preamble to the 1945 Constitution of the Republic of the Republic of Indonesia (1945 Constitution) above, implies that the service to patients carried out by the Hospital as a representative of the government and the state is part of the State's efforts to protect the entire Indonesian nation and all spilled blood Indonesia.

Related to the concretization of the mandate of the Constitution above, realized with the formation of Law No. 44 of 2009 concerning Hospitals. Formers of Law Number 44 Year 2009 concerning Hospitals, understand that the main formulation stated in the Preamble or Preamble to the 1945 Constitution is "the ideals of the Indonesian people".

This fact also applies in Law Number 40 of 2004 concerning the National Social Security System³. The part considering the National Social Security System Law contains a formula that:

"Every person has the right to social security to be able to meet the basic needs of a decent life and increase their dignity towards the realization of a prosperous, just and prosperous Indonesian society. To provide comprehensive social security, the state has developed a National Social Security System for all Indonesians".

Furthermore, in Act Number 24 of 2011 concerning the Social Security Organizing Agency, reaffirming that the national social security system is a state program that aims to provide certainty of protection and social welfare for all people. For this reason, based on

¹ Every time people discuss the nature of things, in philosophy what scientists do is a philosophical problem. This was stated in Teguh Prasetyo, *Keadilan Bermartabat: Perspektif Teori Hukum*, Cetakan Pertama, Nusa Media, Bandung, 2015, page., 1.

² Fourth paragraph, Pembukaan UUD 1945.

³ It is said as spirit, because it is the same as the concept known in the Dignified Justice Theory, put forward in the Theory Foundation section of this Research Proposal, namely *Volksgeist*. *Volks* in German means people in English or nation and people in Indonesian, while *geist* means soul or the spirit. So the *Volksgeist* known in the Dignified Justice Theory is the spirit of the people. It's just that it needs to be understood that the *Volksgeist* concept is a juridical metaphor, a very abstract concept. Therefore, in the direction given the Theory of Dignified Justice, the soul of the nation can be found concretely and empirically / scientifically in two main sources. The first primary source, namely the applicable laws and regulations, and the second source, namely court decisions (judge-made-laws or case laws) that have permanent legal force in a legal system. The legal system intended in this study, namely the legal system known as the Pancasila Legal System. *Infra, fn.*, 9.

Article 5 paragraph (1) and Article 52 of the Law on the National Social Security System, the Government is given the obligation to form a Social Security Organizing Agency.

The Social Security Administration Agency (hereinafter abbreviated as BPJS) is the result of the transformation of four State-Owned Enterprises that previously handled the same role. The existence of the BPJS is to accelerate the implementation of a national social security system for all Indonesian people, the derivation of lawsuits in the 1945 Constitution of the Republic of Indonesia, whose formulation has been stated above.

Draw the common thread of the formulation of the principle set forth in Law Number 44 of 2009 concerning Hospitals, as well as the Law on the National Social Security System and the Law on the Social Security Administering Board. Basically it contains the mandate that the goal of the state is to improve the welfare of the people, namely by developing a social security system for the welfare of all people.

According to the formulation of the provisions in the Explanation of Law Number 44 Year 2009 concerning Hospitals, health as one of the elements of the concept of "general welfare" which is a juridical phraseology in the Preamble of the 1945 Constitution of the Republic of Indonesia must be realized through various health efforts. Such efforts are carried out in the framework of overall and integrated health development supported by the national health system⁴. This is also in line with the mandate of Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia which contains the inheritance that everyone, in this case especially all Indonesian people, both the poor and the rich, are all entitled to health services.

Furthermore, in Article 34 paragraph (3) of the 1945 Constitution of the Republic of Indonesia it is stated that the state is responsible for providing adequate health service facilities. Based on Law Number 36 Year 2009 regarding Health, the nature of health service facilities is formulated as a tool and / or place used to carry out health service efforts, both promotive, preventive, curative and rehabilitative in nature by the Government, Regional Governments, and / or the community.

Law No. 44/2009 concerning Hospitals also emphasizes that Hospitals are one of the health service facilities. In the formulation of the General Explanation of the Hospital Law, the Drafting of Law No. 44 of 2009 concerning Hospitals conceptualizes Hospitals as part of the health resources that are indispensable in supporting the implementation of health efforts.

⁴ General Explanation of Law Number 44 Year 2009 concerning Hospitals, Alenia First. Quotations are given by the author in order to emphasize that the intended phraseology is the phraseology contained in the formulation of the legislation referred to.

In connection with the conception of "Government responsibility" in the title of this dissertation research, in essence the Hospital plays a role or functions as a place to heal illnesses and restore health. The function referred to in it has the meaning of the responsibility of the Government in improving the level of community welfare. In the context of carrying out the intended role or function, especially if judging from the point of law governing financing, the Hospital also requires large operational and investment costs to support the implementation of its activities. For this reason, hospitals need to be supported by the availability of sufficient and sustainable funds. Laws through the applicable laws and regulations are held in order to support, and justify that matter.

Law Number 44 of 2009 concerning Hospitals is the main regulation and can be said as the most concrete form of justice, the legal instruments needed to regulate hospitals thoroughly and reliably to provide legal certainty and protection so that there is an increase, direction and legitimacy hospital management.

In addition to the nature of the Hospital as stated above, it is also a juridical formulation, that the Hospital, which is a health care institution that organizes individual health services in a complete manner that provides inpatient, outpatient, and emergency services for patients. It appears there, that hospitals are the subject of law. However, not only hospitals can be said to be legal subjects. There are still other central legal subjects in legal relations that are of concern to this dissertation research; namely the patient.

The patient's understanding is that every person who consults his health problems to obtain the necessary health services both directly and indirectly at the Hospital.⁵ The patient can be a citizen, but can also be a foreigner. The formulation of such an understanding can be found in Article 1 Number (1) of the Hospital Law.

Based on the type of service provided, then as formulated in Article 19 Paragraph (1) of the Hospital Law, Hospitals are categorized in General Hospitals and Special Hospitals. General Hospital provides health services in all fields and types of diseases. Whereas the Special Hospital provides primary services in one particular field or type of disease based on scientific discipline, age group, organ, type of disease, or other specificities.

Based on its management the Hospital can be divided into Public Hospitals and Private Hospitals. That was stated in Article 20 Paragraph (1) of the Hospital Law. Public Hospitals can be managed by the Government, in this case the Central Government, including

⁵ The nature or understanding of the patient according to the law can be found in Article 1 number (4) of Law Number 44 of 2009 concerning Hospitals.

the Indonesian National Armed Forces (TNI) and the Indonesian National Police (POLRI)⁶, and Regional Governments, as well as Non-profit Legal Entities. It is explained in the Elucidation of Article 20 paragraph (2) of the Hospital Law, that what is meant by a Nonprofit Legal Entity is a Legal Entity whose business results are not distributed to the owner, but is used to improve services. The forms of the Non-profit Legal Entity include: Foundations, Societies and Public Companies. On the other hand, the Private Hospital is managed by a Legal Entity with the aim of profit. The legal entity is a Limited Liability Company or Limited Liability Company.⁷

In relation to the Hospital category that has been stated above, sociologically it can also be concluded that the Hospital can also be seen in the form of non-profit and profit, so in the community news is still heard, there are problems that lately are felt to require attention and treatment. These problems, namely before the emergence of government policy (public policy) regarding national health insurance for all Indonesian people which have been poured into the applicable legal products in the Pancasila Legal System⁸.

Hospitals are rarely reportedly refusing patients who come to the hospital to get health services. That is because at that time, legally normatively there was no clear distinction between hospitals that were managed for-profit and profit. It is also rarely heard that the Hospital faces difficulties in continuing its services to patients, especially to patients from poor people due to the accumulation of debts that have not been paid by third parties on behalf of patients to the Hospital.

In fact, in the implementation it turns out that Law No. 40 of 2004 the National Social Security System is not easy, many regulatory and operational technical tools must be prepared clearly, measured and planned so that they can be implemented well and on target. So that in

⁶ Elucidation of Article 20 paragraph (3) of Law Number 44 Year 2009 concerning Hospital.

⁷ Article 21 of Law Number 44 Year 2009 concerning Hospital.

⁸ This dissertation study uses the terminology of the Pancasila Legal System, which is written in capital letters as a compound noun. This was done considering that it was time for the Indonesian people to identify their own legal system with the Pancasila Legal System. The Pancasila legal system is different from the common law system, civil law, and other legal systems that are well known so far. However, due to its inclusive nature, the Pancasila Legal System does not close itself from existing systems, the Pancasila Legal System receives inspiration from other civilized legal systems (civilized legal systems) to then be adjusted to Pancasila values before deciding to: "if need to do what is called receptive ". Teguh Prasetyo, Pancasila Legal System (System, Legal System and Formation of Laws and Regulations in Indonesia): Perspective of Dignified Justice Theory, First Matter, Nusa Media, Bandung, 2016. Discussions that have been accepted internationally regarding the Pancasila Legal System and Dignified Justice Theory , also stated by Teguh Prasetyo, in: *Pancasila the Ultimate of All the Sources of Laws (A Dignified Justice Perspective)*, Journal of Law, Policy and Globalization, International Institute for Science, Technology and Education (IISTE), Vol. 54, October 2016; juga dalam *Criminal Liability of Doctor in Indonesia (From A Dignified Justice Perspective)*, International Journal of Advanced Research (IJAR), 1(10).

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Generally what the Hospital complained of in the Hospital-BPJS-Patient legal relationship pattern, namely the accumulation of unpaid or said receivables that have the potential to cause potential loss to the Hospital, while to support its management, as stated above, Hospitals require huge funds and investments to maintain the continuity of management and service to the community, in this case more specifically the patient.

Related to the problem of piling up accounts receivable that must be claimed from the BPJS, resulting in patients having difficulty receiving the services they really need. It has become a habit in the community that there are still poor patients who are rejected by the Hospital because they do not have the cost of paying hospital services. It has been explained previously that the consequences of not serving patients, especially patients from the poor, have caused violations of the mandate of the Constitution and the laws and regulations that are derived from the Constitution.

The presence of BPJS in its development has not been able to overcome the problems as stated above as well. This is because in addition to the BPJS there are also institutions, namely third parties who help in the health services that already exist, and have a strong and established status in serving some of the previous groups of people. As a result, BPJS patients must "fight for mercy" with patients participating in institutions other than BPJS, including patients from insurance companies that are rich and very capable of paying for hospital services.

Related to this arises a sense of injustice from the majority of the people (patients) because they are a group that often cannot be served by hospitals. The poor population group of BPJS participants must compete with the group of patients (people) who take part in well-

established and large health insurance programs as well as compulsory health insurance programs for people such as Civil Servants and others. Article 6 of Law No. 44 of 2009 concerning Hospitals that the government has responsibilities which are:

- a. providing hospitals based on community needs.
- b. guaranting the financing of health services in hospitals for the poor, or people who cannot afford it in accordance with statutory provisions.
- c. fostering and overseeing the organization of hospitals.
- d. providing protection to hospitals in order to provide health services in a professional and responsible manner.
- e. providing protection to the public service users of hospital services in accordance with statutory provisions.
- f. mobilizing community participation in the establishment of hospitals in accordance with the types of services needed by the community.
- g. provide health information needed by the community
- h. provide the human resources needed.
- i. regulate the distribution and distribution of high-tech and high-value medical devices.

The government through the BPJS health has an obligation to pay for health facilities for services provided to participants by having to pay at the latest:

- a. the 15th (fifteenth) of each current month for first-level Health Facilities using pre-effort payment based on capitation;
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The Road Map Towards National Health Insurance 2012-2019 states that in 2014, the Government targeted 121.6 million residents to be given health insurance by the Health BPJS. That means there are still millions more patients who cannot be served by BPJS. The number is assumed to come from the Jamkesmas program as many as 96.4 million people, participants managed by PT Askes (Persero) have 17.2 million people, Social Security Assurance (JPK) participants as many as 5.5 million people, and from participants of the Guarantee Program General Public Health (PJKMU) from local governments totaling 2.5 million.

Only in 2019 to come, the Government is targeting the entire community, as many as 257.5 million people will be guaranteed by BPJS Health. Of course what is meant by the concept of "guarantee", namely that later in 2019 there will be no more members of the community, including the poor people who are BPJS participants will be refused to be given health services by the Hospital, either openly or directly, or indirectly.

b. Justice repositioning in politics of health insurance

Based on the discussion above it appears that the implementation of the BPJS above is not yet just. So it needs to be repositioned for justice in the Pancasila concept in the politics of health insurance in Indonesia. Namely by reconstructing:

1. Aspects of legal formulation

In this aspect the law related to health insurance must be reconstructed again by making the value of Pancasila as its main foothold, so that the implementation of the health insurance law politics is not grounded in the economic benefits of related institutions like private profit institutions.

2. Aspects of law enforcement

In its implementation, the health insurance system also needs to be closely monitored by the competent authority with strict sanctions for violations of authority related to the system of implementing health insurance.

3. The managerial aspect of implementing the health insurance system

Dror stated that law enforcement as a process will involve a variety of interconnected components and some even have a fairly close dependency. As a result the absence of one component can lead to inefficient and useless so that the legal goals that are aspired to be

difficult to realize. These components include personnel, information, budget, substantive law facilities, procedural law, decision rules and decision habits. So it is clear that in realizing the national health insurance system, priority should be given to personnel, information, budget, substantive law facilities, procedural law, decision rules and decision habits. Next J.M. Keynes states that the state must actively seek prosperity, act fairly which can be felt by the entire community equally and in balance, not the welfare of certain groups, but all people. It is very reckless if economic development is denied and economic growth is only viewed and concentrated in mere percentage figures. People's welfare is a real indicator.

Based on Keynes's opinion above, it can be stated that the implementation of health insurance must aim at efforts to realize prosperity by acting fairly for the whole community equally and evenly, not to prosper certain groups, but all people.

E. Conclusions

Based on the various explanations above, it is clear that the implementation of health insurance in Indonesia is not yet equitable, this is because the existing formulation causes the problem of BPJS institutions' debts to partner hospitals that result in losses to partner hospital bills from BPJS. This situation results in the community not being able to receive medical treatment for diseases that require high-cost medical treatment and treatment. This is clearly unfair, especially for the poor. Therefore, it is necessary to carry out reconstruction on aspects of the rule of law, and the supervision system, as well as the implementation of a more equitable health insurance system in Indonesia.

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