

Administrative Sanctions Against BPJS Kesehatan Independent Membership Reviewed from a Human Rights Perspective

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ABSTRACT

Keywords: Independent Health services, obtaining social security, and public Participants; services are human rights of all Indonesian people, and Administrative Sanctions; statutory regulations protect their implementation. BPJS; Human Rights. Membership in BPJS Health is mandatory for Indonesian people. The government will give administrative sanctions through written warnings and fines and not receive certain public services to independent participants if they do not participate in the BPJS Health program. These sanctions cause certain problems because getting public services is a constitutional right of society and a very important need in society's activities to develop itself. The research method used in this research is normative juridical with a statutory and conceptual approach. The results of the analysis and discussion show that the government is responsible for providing quality health and public services to the community. Administrative sanctions for independent participants for not registering as BPJS Health members are not in line with human rights.



Introduction

Human Rights are a set of rights that are inherent in the nature and existence of human beings as creatures of God Almighty and are His gifts that must be respected, upheld, and protected by the state, law, government, and everyone for the honor and protection of human dignity and dignity. Other people or the state does not obtain these rights because of their birth as human beings. In a religious context, these rights are a gift of God, and only God has the right to revoke them (Perwira, 2014).

Based on the 1945 Constitution of the Republic of Indonesia (1945 Constitution) it is stated that one of the elements of welfare in human rights that the ideals of the Indonesian nation must realize is Health (Soekidjo, 2010) in Article 28H Paragraph (1) of 1945 Constitution states that: "Everyone has the right to live a prosperous life in birth and mind, to live, and to get a good and healthy living environment and the right to receive health services." The article explains that everyone has the basic right to live prosperously both physically and mentally, have a place to live, and have the right to obtain health

services to continue community life. Health is part of human rights and is the responsibility of all parties.

Health must receive more attention from the government because life is the most important thing. Human life is meaningless if it is not supported by good health. Health is directly related to human resource development, an important element in a country's development. Good human resources will accelerate a country's growth. Thus, the government aims to provide good health services to the community to create superior human resources.

To realize the community's welfare, the Indonesian government established a social security system to ensure that everyone can meet the basic needs of a decent life. This is in line with the 1945 Constitution Article 28H paragraph 3 mandate: "Everyone has the right to social security that allows the development of himself as a whole human being with dignity". The mandate is also contained in Article 34, paragraphs (2) and (3) of the 1945 Constitution, which explains that "the state develops a social security system for all people and empowers the weak and incapable people by human dignity and the state is responsible for the provision of proper health care facilities and public service facilities.

With the mandate of the 1945 Constitution, the government must make a regulation for the benefit of the people in ensuring the implementation of social security and health services for the community, so the government made Law Number 40 of 2004 concerning the National Social Security System (UU SJSN). The National Social Security System must guarantee the basic needs of a decent life for each participant and his family members. It must be organized based on the principles of humanity, benefits, and social justice for all Indonesians. Article 5 of the SJSN Law mandates the establishment of a Social Security Organizing Agency. The organizing body in the form of a legal entity must be based on the principles of cooperation, non-profit, openness, prudence, accountability, portability, compulsory membership, and trust funds, and the results of the management of social security funds are all for the development of the program and the maximum benefit of participants. The Social Security Organizing Agency, referred to in the SJSN Law, is a. Labor Social Security Company (Persero); b. Company (Persero) Civil Servant Savings and Insurance Fund (TASPEN); c. Company (Persero) Social Insurance of the Armed Forces of the Republic of Indonesia (ASABRI); and d. Indonesian Health Insurance Company (ASKES).

In its development, it turns out that the four social security organizing agencies mentioned above have not been able to reach all Indonesian people, especially the lower middle class who work in the informal sector and irregular workers, so in 2011, the Government of Indonesia made Law Number 24 of 2011 concerning the Social Security Administration Agency (BPJS Law) which mandates the transformation and merger of the four State-Owned Enterprises (JAMSOSTEK), (TASPEN), (ASABRI), (ASKES) into one institution, namely the Social Security Administration Agency (BPJS), to accelerate the implementation of the national social security system for all Indonesian people.

In 2020, the Government of Indonesia formed the Job Creation Law, which was later amended into a Government Regulation instead of Law Number 2 of 2022 concerning Job Creation, which has been stipulated as law by Law Number 6 of 2023. In Law Number 6 of 2023 Article 83, several provisions in the BPJS Law have been changed. Namely, the provisions of Article 6 are amended so that they read as follows: BPJS Kesehatan organizes a health insurance program, while BPJS Employment organizes a work accident insurance program, old-age insurance, pension insurance, death insurance, and job loss insurance.

BPJS Kesehatan provides health certainty for people at the lower levels who have difficulty getting health services. With this institution, people, especially small people, can get the same health services as others and are not discriminated against based on their status (Ekaningsih & Karyadi, 2023).

This health insurance requires everyone to participate in health social insurance and pay premiums/contributions every month. This health insurance is implemented nationally based on the principles of social insurance and the principle of equity. What is meant by the principle of social insurance is a mandatory fund collection mechanism derived from contributions to protect against socio-economic risks when they befall participants or their family members. The principle of equity is that each participant who pays contributions will receive health services in proportion to those paid (Suhanda, 2015, p. 106).

Article 16 of the BPJS Law explains that every person, other than Employers, Workers, and recipients of Contribution Assistance, from now on referred to as independent participants who meet the requirements for participation in the Social Security program is required to register themselves and their family members as Participants to BPJS, by the Social Security program that is followed. In contrast, Article 17 states that every person who does not carry out the provisions referred to in Article 16 is subject to administrative sanctions in the form of written warnings and fines and is not receiving certain public services. In Government Regulation Number 86 of 2013 in Article 9, the sanction of not receiving certain public services is not being able to take care of Building Permits (IMB), Driver's Licenses (SIM), land certificates, passports, or Vehicle Number Certificates (STNK). The provision of not receiving certain public services is strengthened by the Presidential Instruction of the Republic of Indonesia Number 1 of 2022 concerning Optimizing the Implementation of the National Health Insurance Program.

These sanctions pose problems because getting public services is the community's constitutional right, and public services are a very important need in community activities to develop themselves. The state guarantees public service facilities that meet the community's health and public services needs because community activities cannot be separated from these two things. Some examples of problems in the community in managing public services because they do not register themselves as BPJS Kesehatan participants are as follows: The association that is a forum for online motorcycle taxi drivers (ojol), the Association of Two-Wheeled Actions or Garda, refused and stated that

it was ready to fight the new rules regarding the management of Driver's Licenses (SIM) and STNK, one of the requirements of which must be an active participant of BPJS Kesehatan (CNN Indonesia, 2022).

CNN reported that several residents said that the government's policy of making the BPJS Kesehatan card one of the requirements for making a Driver's License (SIM), Vehicle Number Registration Letter (STNK), and Police Record Certificate (SKCK) was inappropriate and could even hinder the process itself (CNN Indonesia, 2022).

Based on the background description above, the problem study in this study is:

1. The government's legal responsibility for the rights of public services and health services
2. Administrative sanctions against BPJS Kesehatan membership reviewed from a human rights perspective

Method

The research method used in this study is normative juridical, with a legislative approach (Statute Approach), which examines and analyses laws and regulations related to the legal issues being studied, and a conceptual approach, which starts from views and doctrines that develop in legal science.

Results and Discussion

The Government's Legal Responsibility for the Rights of Public Services and Health Services

The term responsibility in the Great Dictionary of Indonesian (KBBI) means a situation to bear everything or a person's awareness of the obligation to bear all the consequences of something he has done. The concept of responsibility includes rights and obligations for everything done. Responsibility is an obligation to bear responsibility and losses suffered when prosecuted, both in the legal and administrative fields (Permana, Salim, & Munandar, 2017).

Two terms refer to liability: liability (the state of being liable) and responsibility (the state of being responsible). Liability is a broad legal term that contains the meaning of almost every character of risk or responsibility and refers to all characters of rights and obligations. Liability is a condition responsible for actual things or things that can cause a loss, threat, crime, cost, or burden. Responsibility means things that can be accounted for an obligation, including judgments, skills, abilities, and abilities; in addition to that, it also means the obligation to be responsible for the laws that are implemented and to correct or otherwise provide compensation for any damage that has been caused (Maatisya & Santoso, 2022).

Public service is helping others in certain ways that require sensitivity and interpersonal relationships to create satisfaction and success. (Bazarah, Jubaidi, & Hubaib, 2021) Based on Law Number 25 of 2009 concerning Public Services (Public Service Law), Article 1 states that what is meant by public services is an activity or series of activities in order to meet service needs by laws and regulations for every citizen and

resident for goods, services, and administrative services provided by public service providers. Article 5 of the Public Service Law explains the scope of public services, which includes education, teaching, work and business, housing, communication and information, environment, health, social security, energy, banking, transportation, natural resources, tourism, and other strategic sectors. The state is obliged to serve every citizen and resident to fulfill their basic rights and needs within the framework of public service, which is the mandate of the 1945 Constitution Article 34, Paragraphs 2 and 3. The provision of public services by the government to the community is an implication of the state's function as a public servant to realize the welfare of the people (Ekaningsih & Karyadi, 2023). Every citizen has the same right to get good services and the government's obligation to provide quality public services. Public service activities must be regulated based on regulations made by the government with the main purpose of meeting the basic needs and welfare of the community (Susetiyo & Iftitah, 2021). There are three considerations why the state must provide public services. First, the state can only make or regulate investments, such as developing transportation infrastructure, providing state administrative services, licensing, and others. Second, it is an obligation of the state because of its position as a recipient of the mandate. Third, public service costs are funded from public money through taxes and public mandates for the state to manage the country's sources of wealth (Susetiyo & Iftitah, 2021).

Health services as a public service field are expressly regulated in the Public Service Law. The inclusion of health as one of the fields in public services shows that health services are one of the important components in aspects of state life.

The state has a very important role in meeting the basic needs of its people, especially in the health field. The implementation of quality and affordable health services is the responsibility of the central and regional governments, as mandated by Law Number 17 of 2023 concerning Health (Health Law) Article 6, which reads, "The Central Government and Regional Governments are responsible for planning, regulating, organizing, fostering, and supervising the implementation of quality, safe, efficient, equitable, and affordable health efforts by the community." The central and regional governments are also responsible for the ease of access to health services, as mentioned in Article 11 of the Health Law, which reads, "The Central and Regional Governments are responsible for the availability and access to health service facilities as well as health information and education". Efforts to implement health support from resources, facilities, and infrastructure, as well as good management, aim to achieve the highest degree of health and welfare individually and in the community. The health efforts in question include promotive, preventive, curative, rehabilitative, and palliative. They are the responsibility of the central and regional governments as stated in Article 19 of the Health Law, which reads, "The Central Government and Regional Governments are responsible for the implementation of individual health efforts and public health efforts".

The legal basis for state programs that aim to provide protection and social security in the health sector is the Health Law and the SJSN Law. In the Health Law Article 411, it is stated that:

1. Agencies that organize social security programs in the health sector organize funding for individual health efforts by implementing health insurance programs.
2. As intended in paragraph (1), the health insurance program is mandatory for all residents.

The SJSN Law is a program formed to ensure that everyone can meet the basic needs of a decent life. This SJSN Law regulates the principles, objectives, principles, organization, and procedures for implementing the national health insurance program. The existence of BPJS is one way to meet the basic needs of a decent life, increase human dignity, and realize a prosperous, fair, and prosperous Indonesian society.

The government requires everyone to participate in the Social Security Program organized through BPJS Kesehatan to provide the public with certainty about proper health facilities. However, so far, some people still feel that they have not received health insurance. The provision to make the public follow BPJS Kesehatan participants is a form of government concern for health insurance for welfare and a decent life. BPJS Kesehatan is engaged in the health sector, which will help people get proper health insurance so that they are not worried about getting health services in hospitals. The government's efforts to improve the quality of social security implementation by developing various programs. BPJS Kesehatan continues to develop its latest programs, namely donation programs, based on the principles of cooperation explained in the SJSN and BPJS Law. This donation program is also to build a sense of concern for the underprivileged and help them until their economy is sufficient, with a sense of Indonesian unity and the principle of cooperation that can help the underprivileged get the right to access health services.

The role of the government and BPJS is to ensure the community's basic needs, especially in accessing health services. BPJS Kesehatan needs to coordinate continuously with local governments to socialize with the public about the benefits of BPJS because many people have not become BPJS Kesehatan participants because they have not received information. There needs to be an insistence from BPJS Kesehatan to the local government to assist BPJS Kesehatan in fulfilling the rights of citizens and their basic needs so that information will arrive and the community can accept BPJS so that no one is yet a participant. In addition, a strategy that should not be forgotten is synergy across agencies so that efforts to improve service quality are efficient and effective.

Administrative Sanctions on BPJS Kesehatan Independent Membership Reviewed from a Human Rights Perspective

According to KBBI, sanctions are dependents (actions, punishments, and so on) to force people to keep agreements or obey the provisions of regulations or laws. According to Utrecht, sanctions result from an act or a reaction from another party, be it a human being or a social institution for a human act (Walla, Salmon, & Mustamu, 2021). Sanctions in Administrative Law are tools of power that are public law that the government can use as a reaction to non-compliance with obligations contained in the norms of State Administrative Law. Administrative sanctions are established to ensure respect for legal provisions. Implementing administrative sanctions aims to create order,

provide legal certainty, and guarantee the protection of everyone's rights from a disturbance (Walla et al., 2021).

The establishment of BPJS Kesehatan is based on the BPJS Law, which is the fourth transformation of State-Owned Enterprises. Its purpose is to accelerate the implementation of the national social security system for all Indonesian people based on openness, mandate, and management for the community's benefit.

BPJS Kesehatan membership is mandatory for all Indonesians, as mandated by the BPJS Law. Article 16 states, " Everyone, other than Employers, Workers, and Contributory Assistance recipients, who meet the requirements for membership in the Social Security program is required to register themselves and their family members as Participants in BPJS.

BPJS Kesehatan membership is based on Presidential Regulation of the Republic of Indonesia Number 82 of 2018 concerning Health Insurance (Perpres et al.), independent participants, contribution assistance, workers who receive wages, and the non-worker segment. An independent worker is a participant who personally registers himself and his family members to become a participant and makes payments according to the chosen class. Wage-receiving workers are a segment of workers in Indonesia whom employers register. Meanwhile, participants who receive contribution assistance (PBI) are indicated Indonesian people, including the poor and underprivileged, who are registered and financed through the State Budget or the Regional Budget. Then, non-workers are participants who are not part of the participants described in the previous section (Saputro, Fathiyah, 2022:212).

BPJS Kesehatan membership for the Indonesian people is mandatory for employers, individuals, and everyone other than employers, workers, and PBI. BPJS Kesehatan membership is mandatory for all Indonesian people as mandated by the BPJS Law Article 16, which states that "Every person, other than Employers, Workers, and Contributory Assistance recipients, who meet the requirements for membership in the Social Security program is required to register themselves and their family members as Participants to BPJS." This means that the article is intended for people who register themselves independently, which reads: "Everyone, other than Employers, Workers and Recipients of Contribution Assistance, who meet the requirements for participation in the Social Security program is required to register themselves and their family members as participants to BPJS, by the Social Security program they are participating in." The article contains and explains that the government requires all people to participate in the social security program organized by the government through BPJS Kesehatan by providing complete identity data to BPJS Kesehatan. The government requires the public to become BPJS Kesehatan participants to provide certainty about proper health facilities. So far, some people still feel that they have not received health insurance. Article 17, paragraph (1) of the BPJS Law affirms that those not implementing these provisions will be subject to an administrative sanction. There are three administrative sanctions according to Article 17, paragraph (2) of the BPJS Law:

1. Written warning

2. fine; and
3. do not get public services.

The rules on the procedure for sanctioning written reprimands for employers or every person who does not participate in the BPJS Kesehatan program are regulated in Government Regulation Number 86 of 2013 concerning Procedures for the Establishment of Administrative Sanctions to Employers Other than State Administrators and Everyone, Other than Employers, Workers, and Recipients of Contribution Assistance in the Implementation of Social Security (PP Administrative Sanctions) which states that the imposition of written sanctions of reprimands is given at most two times each for a maximum period of 10 working days, while the imposition of fine sanctions is given for a maximum period of 30 days from the end of the imposition of the second written reprimand sanction (Nuriyanto, 2014). The imposition of sanctions for not receiving certain public services is carried out by the Government, provincial governments, or regency/city governments at the request of BPJS. Sanctions for not receiving certain public services are imposed if the sanctions of the first written reprimand and the second written reprimand, within ten working days each to the sanction of fines within 30 working days are not implemented.

Sanctions for not receiving certain public services imposed on independent participants who meet the requirements for participation in the social security program include:

1. Building Permit (IMB);
2. Driver's License (SIM);
3. land certificates;
4. passport; or
5. Vehicle Number Registration Letter (STNK).

In the Presidential Instruction on National Health Insurance, the management of services such as the management of Umrah pilgrims and special pilgrims, applicants for general legal administration services, intellectual property services, and immigration services, the formation of cooperatives, micro, small, and medium-scale business actors are required to be active participants in the National Health Insurance program.

BPJS Kesehatan sets the sanction to limit access to public services. People must register with BPJS Kesehatan; if people have registered, access to public services will be given again.

The 1945 Constitution guarantees public services. The state is responsible for proper public service facilities to ensure community protection and welfare. Public service is a measure of the government's success in governing a modern country, not only a state of law.

The problem with this BPJS Law is that rules related to the obligations of everyone other than employers, workers, and PBIs who do not register themselves and their family members with BPJS can result in administrative sanctions, such as not receiving certain public services.

According to Article 16 of the BPJS Law, what is meant by everyone is "everyone, other than employers, workers, and recipients of contribution assistance, who meet the requirements for participation in the social security program must register themselves and their family members as participants in BPJS, by the social security program followed". As explained in the previous chapter, each person referred to by the BPJS Law is everyone who works or strives at their own risk, meaning that this community has their job or business, not a wage earner (independent participant).

The imposition of sanctions for not getting certain public services for everyone, as referred to above, cannot be carried out because it refers to the principle of clarity of purpose and can be implemented in the making of a Law and concerning the contents of all articles in the Law must contain the objectives to be achieved and can be implemented. Based on the formation of good laws and regulations must be based on protection; according to the Great Dictionary of the Indonesian Language (KBBI), it means an act of protection or protection (Manggalatung, 2014).

Administrative sanctions for independent participants in Article 17 of the BPJS Law are not in line with human rights because the government is responsible for providing proper public services by the mandate of Article 34 paragraph (3) of the 1945 Constitution, which means that the government is obliged to provide public service facilities to the community. After all, it is part of human rights, a moral concept in community life. Nations and states have been striving for a long time, individually and collectively, to uphold truth and justice from the weak group to the group with more authority. The right to get public or public services is a basic right and need of citizens guaranteed by the state. The concept of human rights is the basis for the government to make policies to protect people's rights for the sake of welfare. BPJS Kesehatan provides sanctions for people who have not registered themselves with BPJS Kesehatan for compliance and helping other communities based on cooperation. However, in making a policy to impose sanctions, it must pay attention to principles that do not contradict human rights or are incompatible with the laws and regulations above, in this case, the 45th Constitution. In imposing this sanction, the government must still pay attention to the principles of written and unwritten administrative law. Administrative sanctions of not getting public services for everyone who does not register as a BPJS participant are burdensome for the community, especially for the lower middle class, because the sanctions are related to life in all aspects.

Conclusion

Human Rights are a set of rights that are inherent in the nature and existence of human beings as creatures of God Almighty and are His gifts that must be respected, upheld, and protected by the state, law, government, and everyone for the honor and protection of human dignity and dignity. Health, obtaining social security, and public services are human rights of all Indonesian people, which are protected by laws and regulations in their implementation.

The Indonesian government must provide quality, comprehensive, and accessible health services to all Indonesian people. In order to fulfill this, the government has developed the National Social Security System, which aims to guarantee the fulfillment of basic needs for a decent life for every Indonesian person through the BPJS Kesehatan program. BPJS Kesehatan membership for the Indonesian people is mandatory for employers, individuals, and everyone other than employers, workers, and PBI.

BPJS Kesehatan membership is mandatory for all Indonesian people as mandated by the BPJS Law Article 16, which states that "Every person, other than Employers, Workers, and Recipients of Contribution Assistance, who meets the requirements for membership in the Social Security program is required to register themselves and their family members as Participants to BPJS

BPJS Law Article 17 regulates administrative sanctions, including written warnings, fines, and/or non-receipt of certain public services, that the government will give to everyone other than employers, workers, and recipients of Contribution Assistance if they do not participate in the BPJS Kesehatan program.

Administrative sanctions for everyone other than employers, workers, and PBI are not in line with human rights because the government is responsible for providing proper public services by the mandate of Article 34, paragraph (3) of the 1945 Constitution. These sanctions are burdensome for the community, especially the lower middle class.

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