



## **Legal Protection for Patient of Independent National Health Insurance's Participant: Restriction on Hospitalization Upgrade**

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### **Abstract**

The government issued Regulation of the Minister of Health Number 51 of 2018 which regulates the increase in inpatient classes which are difficult to understand. After the issuance of the Minister of Health's regulation regarding the imposition of fees and the difference in costs in the Health Insurance program, causing confusion in the community. This study aims to analyze the legal protection for independent national Health Insurance Participants after the issuance of the Minister of Health Regulation concerning imposition of cost and difference in the health insurance Program. In addition, to analyze the existence of a norm conflict between the Minister of Health Regulation about Imposition of cost and Difference in cost toward the laws and regulations above. This study uses a statutory, conceptual and comparative approach. The type of research used in this study is normative legal research. The results showed that the legal protection of JKN participants independently after the enactment of Permenkes Number 51 of 2018 regarding the Imposition of Costs and Difference in Costs in the Health Insurance Program was unclear and caused legal uncertainty. Besides that, it turns out there has been a norm conflict between the Minister of Health Imposition of Imposition of costs and costs difference in Health Insurance with the Perpres Health Insurance, the National Social Security Act, the Consumer Protection Law and Human Rights. Settlement that can be taken to harmonize the norm conflict is to revoke Article 10 paragraph (5) Permenkes Number 51 of 2018, set aside the Article and conduct a judicial review to the Supreme Court.

**Keyword:** Health Insurance; Hospitalization Upgrade; Legal Protection; Norm Conflicts.

### **INTRODUCTION**

The constitution mandates that everyone has the right to social security. Every person has the right to meet the basic needs of a decent life and increase his dignity towards the creation of a just and prosperous society (Kaelan, 2017). The President with the approval of the House of Representatives issues Law Number 40 of 2004 concerning the National Social Security System (hereinafter referred to as the SJSN Law). The SJSN aims to provide comprehensive social security for all Indonesians. Furthermore, for further elaboration on social security, specifically health insurance, a Presidential Regulation of the Republic of Indonesia Number 82 of 2018 concerning Health Insurance (issued hereinafter referred to as *Perpres* Health Insurance)

The existence of the National Health Insurance (JKN) with the Social Security Organizing Agency (BPJS) Health as an operator often obtains complaints from the public (Ardianti, 2015). BPJS Health is often be subject oneself to complaints, as if only BPJS Health was to blame or be the party responsible for the deficiencies that occurred in the

administration of JKN. Even though there are other parties involved in it, namely the government as a regulator, health facilities as providers, and JKN participants (Arfahani, 2018). There are some complaints from the public about the implementation of JKN, for example the service is complicated and tiered, JKN is not free even though it is a social security, rules of JKN are too complicated always changing, new regulations come out too fast, and BPJS Health is unable to pay bills from the hospital (Maulana, 2018).

The public is currently highlighting the administration of JKN by BPJS Health due to restrictions on the increase in inpatient classes. The Minister of Health issued Regulation of the Minister of Health No. 51 of 2018 concerning Imposition of Cost Sequences and Costs Difference in the Health Insurance Program (hereinafter referred to as *Permenkes* on Imposition of cost and Difference in Costs in the Health Insurance Program). In Article 10 paragraph (5) of the *Permenkes* states: "The upgrade of treatment class that is higher from patient's rights as referred to in paragraph (1) can only be done one level higher than the class that is the participant's right".

The National Social Security System Law and the Presidential Regulation on Health Insurance previously stipulated the improvement of nursing classes. Article 51 paragraph (1) of the Presidential Regulation on Health Insurance and clarification of Article 23 Paragraph (4) of the SJSN Law states that JKN participants who are not Beneficiaries of Support for Contributions (hereinafter referred to as independent JKN participants) can increase treatment space higher than their rights by paying difference between the costs borne by the BPJS and the costs to be paid due to an increase in service class.

The Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as the Consumer Protection Act), has stipulated that consumer protection aims to increase the empowerment of consumers to choose, determine themselves, and claim their rights as consumers (Article 3.c). Consumers have the right to comfort, security and safety in consuming goods and/or services (Article 4.a).

From the description above, there are several laws and regulations governing the upgrade of hospitalization classes for JKN participants independently. If it is observed that there appears to be a conflict (norm conflict) between Article 10 Paragraph (5) *Permenkes* Imposition costs and Difference in costs in the Health Insurance program with Article 51 Paragraph (1) *Perpres* Health Insurance and clarification of article 23 paragraph (4) of the National Social Security System Law, and Article 4.a of the Consumer Protection and Human Rights Law.

Researches on legal protection for health insurance participants has been carried out, one of which is by Wiriani (2009) that health insurance participants can sue health service providers in the event that the health insurance participants do not get their rights according to the provisions. In addition, Suhartoyo (2018) revealed that in implementing legal protection for BPJS Kesehatan participants in health services, the government has issued regulations that can protect the rights of BPJS Kesehatan participants in order to avoid discrimination in implementing BPJS Health services. Affah & Paruntu (2015) reveal that legal protection is provided if participants are BPJS Kesehatan who are independent participants and recipients of premium assistance (PBI) paid by the government to poor participants.

Based on the above, the researcher is interested in studying the problem for research. This study aims to analyze the form of legal protection for JKN participants independently after the issuance of *Permenkes* concerning Imposition of Cost and Difference in cost in the Health Insurance Program and to analyze the existence of norm conflicts between the *Permenkes* concerning Imposition of costs and Difference in cost of the legislation above it.

## **METHOD**

The type of research used in this study is normative legal research. In this type of research the intrinsically studied legal conditions, namely law as a value system and law as social norms. The results to be achieved are to provide a prescription of the conditions that it should be (Marzuki, 2017). The approach used in this research is to use the statute

approach, conceptual approach, and cooperative approach. These three approaches will be used to analyze the research problems that have been formulated.

The statute approach was chosen because this study will examine all statutory regulations relating to the legal issues being examined. The conceptual approach starting from the views and doctrines that develop in the science of law. By studying these views, researcher will find ideas that generate to legal notions, legal concepts, and legal principles that are relevant to the current issue. Understanding of the views and doctrines is a benchmark for researchers in making legal arguments in solving legal issues faced. Comparative approach is carried out by comparing regulations with the same legal content between a country and one or several countries. The purpose of this approach is to obtain similarities and differences between these laws and regulations (Marzuki, 2017).

## **RESULT AND DISCUSSION**

### **Legal protection for independent JKN patients after the enactment of *Permenkes* on Imposition of cost and Difference in Costs in the Health Insurance Program**

Legal protection is a protection given to legal subjects in accordance with the rule of law, both those that are preventive and in a repressive form, both written and unwritten in the context of enforcing the rule of law. Patient is every person who consults his or her health problems to obtain the necessary health services both directly or indirectly to the doctor or dentist (Law on Medical Practice, Article 1 number 10). According to Rondonuwu, Lumunon, & Tangkere (2018) that hospital patients are consumers, so in general patients are protected by Law No. 8 of 1999 concerning Consumer Protection (Law No. 8/1999). While JKN Independent patients are patients who are JKN participants who pay their own contributions.

The government has issued several laws and regulations (formal legal sources) which are the source of law and regulate JKN, which is legal protection for JKN patients in general including JKN independent' patients. *Pancasila* as the basis of the Indonesian state, the nation's view of life, has mandated the welfare of all Indonesians from Sabang to Merauke. The intended laws and regulations are: 1945 Constitution article 28 H paragraph (1) and (2), as well as article 34 paragraph (1) and (2); MPR Decree Number X/MPR/2001; The SJSN Law; BPJS Law; Perpres Health insurance; and Ministerial Regulations.

JKN is one of the social security programs provided by the state to the people of Indonesia to provide financial certainty for the people when they need health services. JKN is part of the SJSN that is carried out using a mandatory social health insurance mechanism based on the SJSN Law with the aim of fulfilling the basic needs of adequate public health provided to everyone who has paid contributions independently, or whose contributions are paid by country.

The rights of independent JKN patients are in principle the same as those of patients in general, coupled with rights specifically regulated in legislation regarding health insurance. The right of JKN patients is to get JKN benefits. The benefits obtained by JKN participants are medical benefits and non-medical benefits. The medical benefits of JKN participants are the same for all membership classes. Medical benefits are not differentiated for all classes. Whereas the non-medical benefits vary depending on the amount of JKN fees paid or the class of patient participation. One of the non-medical benefits is in-room accommodation. Hospitalization services for JKN patients consist of class I, II and III treatment rooms.

There are several laws and regulations governing the upgrade of hospitalization classes for independent JKN patients are as follows:

#### **1. The National Social Security System (SJSN) Law**

Elucidation of Article 23 Paragraph (4) of the SJSN Law states that participants who want a class that is higher than their rights, can be increased by taking additional health insurance, or pay the difference between the costs guaranteed by the BPJS and the costs to be paid due to upgrading treatment class.

## 2. Presidential Regulation on Health Insurance

Article 51 Paragraph (1) of the Presidential Regulation on Health Insurance states that JKN participants who are not recipients of contribution assistance (independent JKN) can increase treatment rooms higher than their rights by paying the difference between the costs borne by the BPJS and the costs to be paid due to an increase in service class.

## 3. The minister of health regulation on Imposition of Costs and Difference in Costs in the Health Insurance Program.

In Article 10 Paragraph (5) of the minister of health regulation states: "Improvement in the class of treatment that is higher than the patient's rights as referred to in Paragraph (1) can only be done one level higher than the class that belongs to the participant"

The regulation for an increase in hospitalization classes in the SJSN Law is in line with the regulation in the *Perpres* Health Insurance, namely JKN participants can independently take care classes without restrictions (only one level) provided they are willing and able to pay the difference in costs. Cost difference is the additional cost paid by Participants when they receive health service benefits that are higher than their rights. According to the SJSN Law and *Perpres* Health Insurance, independent JKN's patients with class III treatment room rights can upgrade their treatment classes to class II, class I, even to VIP classrooms.

Meanwhile, according to the Regulation of the Minister of Health on imposition of costs and the Difference in Cost of Health Insurance, the increase in hospitalization classes is limited, only allowed to increase one level of their rights. JKN patients independently with class III admission rights can only advance to class II, patients with class II admission rights can only advance to class I, only patients with class I admission rights may upgrade to VIP.

According to the perspective of the Consumer Protection Act, patients are consumers (Nasution, 2011). Patients have the rights and obligations as consumers. As consumers, JKN Mandiri patients have the right to upgrade the class of treatment in order to meet the desire to get comfort in utilizing health services in accordance with the economic capabilities of patients. There should be no restrictions on independent JKN patients (consumers) in improving care classes as long as they are willing and able to pay the difference in costs.

While from the point of view of Human Rights, JKN is a human right. Health is the most fundamental or fundamental human rights. Neglecting government obligations in fulfilling the right to health can be categorized as a violation of human rights (Lubis, 2005). In connection with the choice of hospitalization classes by patients, especially independent JKN patients, there should be no limitation, they should only increase one level of their rights because this restricts the patient's freedom to choose and get the best health services that the patient wants. According to the researcher restrictions on taking care classes are contrary to human rights.

The presence of *Permenkes* imposition of cost and cost difference in the Health Insurance Program has a detrimental impact on patients, hospitals, doctors and other health workers.

In pursuance of patients, the presence of *Permenkes* causes confusion whether to stay in the same guarantee class or change participants' guarantee classes. They were confused because they felt they could afford to pay the difference in fees as a consequence of going up to more than one grade but were not allowed to and lost their mortgage. This situation also caused referral rates due to the increased availability of hospitalization rooms. This is certainly inconvenient and enhances to the problem for patients and their families, so they have to have to relinquish their mortgage rights so that they can quickly get a handler. Likewise, for hospitals, the presence of the *Permenkes* causes the hospital's financial or income to decline. Since the issuance of the *Permenkes* on imposition of costs and Difference in Costs in the JKN Program, many VIP and VVIP rooms have been vacant, so there is no potential for additional revenue.

In line with that, the number of patients not JKN or general patients has also declined because they gradually changed their status to become JKN patients. Additional income

with an increase of only one level is felt to be insignificant. As the saying goes 'Rub salt into the wound', it may be appropriate to represent the state of the hospital since the issuance of the Ministerial of imposition of cost and Difference in Costs. For doctors and other health workers, the issuance of this *Permenkes* made their income decrease as a result of declining hospital income.

The implementation of JKN in Indonesia is very unique when compared to neighboring countries in the Southeast Asia region, namely Malaysia, the Philippines and Thailand. The specialty is that in Indonesia there is a differentiation of JKN membership classes which impacts on the differentiation of the hospitalization classes. Whereas in the three neighboring countries there was no distinction in class participation, however all participants were in the same class.

### **Conflict Norms of the Minister of Health Regulation on Imposition Costs and Difference in Cost of Health Insurance with Other Laws and Regulations**

Indonesian law recognizes the existence of a hierarchy / gap in the statutory regulations listed in Article 7 of the law concerning the formation of legislation. Indonesia as a state of law, where all aspects of community activities in Indonesia are regulated by law, which is realized in the form of a statutory regulation. Because so many legal rules are needed to meet the legal needs in the community, it does not rule out the possibility of a legislation overlapping and not in harmony with one another or well-known as norm conflicts.

Norm conflict is a denial of the principle of compliance with the norm hierarchy or the hierarchy of statutory regulations. Necessarily, lower norms should not conflict with norms that are at a higher level. If this is not obeyed, then this condition is also called norm conflict, where the lower norms conflict with or differ from the higher norms.

Conflicts of norms are both vertical and horizontal. Vertical norm conflict is a mismatch between higher and lower norms in accordance with the hierarchical order of the Statutory Regulations according to the Law on the Formation of Regulations. Horizontal norm conflict is a disharmony between norms that have an equal position in the hierarchical order of laws and regulations (Soeprapto, 2007). In addition, there are several types of legal norm conflicts that might occur:

1. Conflict between fellow laws and regulations
2. Conflict between laws and regulations and court decisions
3. Conflict between laws and regulations with customary law

According to the Director General of Laws and Regulations at the Ministry of Law and Human Rights, the implications of conflicting norms / inconsistencies in laws and regulations include differences in interpretation in their implementation, legal uncertainty arises, the laws and regulations are not implemented effectively and efficiently, and legal dysfunction, meaning that the law cannot function to provide guidelines for behaving to the community, social control, dispute resolution and as a means of orderly social change (Kemenkumham, 2019).

Norm conflicts between laws and regulations can be explored or analyzed with legal principles. The principle of law is not a concrete legal norm, but the principle of law is very important in the formation and enforcement of the law. The principle of law is the basic rule underlying the bear of concrete legal norms and the implementation of law. So the principle of law is the heart of the law, or as a star guide for the formation and implementation of law. If in the legal system there are conflicts or norm conflicts occur, then the principles of law will appear to overcome.

In the event of a norm/disharmony conflict of laws and regulations there are three ways to overcome as follows:

1. Change/revoke certain articles which experience disharmony or all articles of the relevant laws and regulations, by the institution/agency authorized to form them
2. Submit application for judicial review to the judiciary as follows; for judicial review of the

Constitution to the Constitutional Court; for testing the statutory provisions under the law against the law to the Supreme Court.

3. Apply the principle of law / legal doctrine (Kemenkumham, 2019).

In the case of an increase in hospitalization classes, the legal norms contained in article 10 paragraph (5) *Permenkes* on imposition of costs in Health Insurance are not aligned or not in line with the legal norms contained in article 51 paragraph (4) *Perpres* Health Insurance and explanations Article 23 of the SJSN Law. So there is a conflict of legal norms between article 10 paragraph (5) *Permenkes* imposition of costs and Difference in Costs in JKN with article 51 paragraph (4) *Perpres* Health Insurance and explanation of article 23 of the SJSN Law.

In addition, according to Article 8 Paragraph (2) of the Law Formation of Regulations that state that the laws and regulations referred to in article 8 Paragraph (1), including ministerial regulations, are recognized and have binding legal force insofar as they are ordered by statutory regulations that is higher laws or formed based on authority. That is, the provisions regarding the difference in costs that exist in the *Permenkes* do not have binding legal force, because the matter of the difference in fees is not ordered to be elaborated further in the *Permenkes*. Therefore, the validity of *Permenkes* as long as it regulates the provisions on the difference in costs can be waived.

According to the perspective of the Consumer Protection Act, there is a norm conflict between Article 10 Paragraph (5) of the Minister of Health imposition of cost and Difference in Cost in Health Insurance with article 4.a and article 4.b Consumer Protection Act. The legal norms contained in article 10 paragraph (5) of the *Permenkes* imposition of cost and Difference in Costs in Health Insurance are not in harmony with or contrary to the legal norms contained in article 4.a and article 4.b of Consumer Protection Act.

From the point of view of human rights, there are indications that the government in this case the Minister of Health limits, reduces and impedes the rights of individuals or communities. The *Permenkes* has prevented the health or recovery of independent JKN participants who were sick, who had to be treated in hospital. This restriction has harmed JKN patients independently. If the atmosphere is uncomfortable treatment will certainly slow down the healing or health of the patient. The legal norms contained in article 10 paragraph (5) *Permenkes* imposition of cost and Difference in Costs in Health Insurance are not in harmony or contrary to human rights. In other words, there is a norm conflict between article 10 paragraph (5) *Permenkes* imposition of cost and Difference in Costs in Health Insurance with Human Rights.

## **CONCLUSION**

Based on the research results that has mentioned above, then it can be concluded that as follows.

The legal protection of JKN patients independently after the enactment of the Minister of Health Regulation regarding Imposition of cost and Difference in Cost in the Health Insurance Program, has become unclear and causes confusion or legal uncertainty. The arrangements regarding hospitalization upgrading according to the SJSN Law (clarification of article 23 paragraph (4)) and *Perpres* on Health Insurance (article 51 paragraph (1)), there are no restrictions on hospitalization upgrade classes for independent JKN patients, it allowed more than one level. According to the Consumer Protection Act, independent JKN patients (consumers) may choose the desired hospitalization class in an effort to obtain comfort in health care services. According to the Human Rights Act, an increase in hospitalization classes is an independent JKN patient's human rights and the restriction on hospitalization classes to only one level is a violation of human rights.

Conflict of Minister of Health norms regarding Imposition of Cost and Difference in Cost in the Health Insurance Program against the laws and regulations above are identified from differences or inconsistencies between norms of the SJSN Law (explanation of article 23 paragraph (4)) and *Perpres* Health Insurance (article 51 paragraph (1)), with the Minister of Health Regulation concerning the Imposition of Costs and Cost Difference in Health Insurance (article 10 paragraph (5)). There is a mismatch of norms between the Consumer

Protection Act (articles 4a and 4b) with the Minister of Health Regulation on the Imposition of Costs and Cost Difference in Health Insurance (article 10 paragraph (5)). There is disharmony between the Human Rights Law and the Minister of Health Regulation regarding the Imposition of costs and Difference in Costs in Health Insurance (article 10 paragraph (5))

## REFERENCE

- Afifah, W., & Paruntu, D. (2015). *Perlindungan Hukum Hak Kesehatan Warga Negara Berdasarkan Undang-Undang Nomor 24 Tahun 2011 tentang Badan Penyelenggara Jaminan Sosial. Mimbar Keadilan: Jurnal Ilmu Hukum, Juli-Novem*. Retrieved from <https://doi.org/10.30996/mk.v0i0.2117>
- Ardianti, A. D. (2015). Pro Kontra BPJS di Masyarakat. Retrieved from Kompasiana website: <https://www.kompasiana.com/www.aprielsay.com/54f6f45fa333115a078b45b2/pro-kontra-bpjs-di-masyarakat>
- Arfahani. (2018). Evaluasi JKN: Siapa yang Berperan? Retrieved November 29, 2018, from Kompasiana website: <https://www.kompasiana.com/arfahani/5bffb263bde57543727b5573/evaluasi-jkn-siapa-yang-berperan?page=all>
- Kaelan. (2017). *Filsafat Pancasila*. Yogyakarta: Fakultas Filsafat UGM.
- Lubis, F. (2005). Kesehatan dan Hak Asasi Manusia, perspektif Indonesia. In F. A. Moeloek, A. Purwadianto, & A. Suharto (Eds.), *Seminar dan Lokakarya "Kesehatan dan Hak Asasi Manusia."* Jakarta: Ikatan Dokter Indonesia (IDI).
- Marzuki, P. M. (2017). *Penelitian Hukum: Metode Penelitian dan Pencarian Kebenaran* (Cetakan Ke). Jakarta: Penerbit Kencana.
- Maulana, M. (2018). Di Balik Defisit BPJS Kesehatan. Retrieved from detikNews website: <https://news.detik.com/kolom/d-4144570/di-balik-defisit-bpjs-kesehatan>
- Nasution, A. (2011). *Hukum Perlindungan konsumen: Suatu Pengantar*. Jakarta: Aditya Media.
- Rondonuwu, S., Lumunon, T., & Tangkere, C. (2018). Perlindungan Hukum terhadap Pasien Miskin Berdasarkan Undang-Undang Nomor 44 Tahun 2009 tentang Rumah Sakit. *Lex Et Societatis, VI*(5). Retrieved from <https://ejournal.unsrat.ac.id/index.php/lexetsocietatis/article/view/20354>
- Soeprapto, M. F. I. (2007). *Ilmu Perundang-Undangan*. Yogyakarta: Penerbit PT Kanisius.
- Suhartoyo. (2018). Perlindungan Hukum Bagi Pekerja Peserta BPJS Kesehatan di Rumah Sakit. *Administrative Law & Governance Journal, 1*(2). Retrieved from [http://download.garuda.ristekdikti.go.id/article.php?article=777674&val=12745&title=Perlindungan Hukum Bagi Pekerja Peserta BPJS Kesehatan di Rumah Sakit](http://download.garuda.ristekdikti.go.id/article.php?article=777674&val=12745&title=Perlindungan%20Hukum%20Bagi%20Pekerja%20Peserta%20BPJS%20Kesehatan%20di%20Rumah%20Sakit)
- Wiriani, M. (2009). *Perlindungan Hukum terhadap Peserta Askes dalam Perjanjian Kerjasama tentang Pelayanan Kesehatan bagi Pegawai Negeri Sipil antara PT. Askes (Persero) Cabang Utama Semarang dengan Rumah Sakit Umum Daerah Semarang* (Universitas Diponegoro). Retrieved from <http://eprints.undip.ac.id/18158/>
- The 1945 Constitution of the Republic of Indonesia Amendment IV
- Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, State Gazette of the Republic of Indonesia of 1999 Number 42, Supplement to the State Gazette of the Republic of Indonesia Number 3821
- Law of the Republic of Indonesia Number 36 of 2009 concerning Health, State Gazette of the Republic of Indonesia of 2009 Number 144144, Supplement to the State Gazette of the Republic of Indonesia Number 50635063