



Law and Health: What are the Legal Aspects of BPJS Participants during the Covid 19 Pandemic

Elli Ruslina

Universitas Pasundan, Bandung, Indonesia

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ABSTRACT

Article 28 H paragraph (1) of the 1945 Constitution which reads "everyone has the right to live in physical and spiritual prosperity, to live and to have a good and healthy life and have the right to obtain health services". Quality health services in question are health services in emergencies and disasters, health services that meet the needs of the community and are carried out in accordance with professional standards and ethics. Based on Law no. 40 of 2004 concerning Insurance and Law no. 24 of 2011 concerning the Social Security Administering Body, BPJS was formed which is an institution established to administer the National Social Security program and the BPJS Health program which aims to provide certainty of social protection and welfare for all Indonesian people. A survey conducted by the Center for Population Research (2019) in six provinces related to "Utilization of National Health Insurance" found that 24.5% of informal sector workers claimed to have experienced BPJS Health contributions in arrears, with an average length of arrears of six months. In fact, 6.9% of informal sector workers have BPJS Health cards in an inactive condition for the last 6 months. The results of this survey also indicate that under ordinary conditions it is difficult for informal sector workers to pay contributions for independent BPJS participants, especially in the current COVID-19 pandemic conditions, it is certain that more and more informal sector workers will be in arrears in premiums and some may even drop out. The research approach uses secondary data (library research), which is a method used by studying statutory documents, books and articles in journals related to the discussion material in the covid 19 pandemic. The purpose of the study is to examine and analyze how the Legal Aspects of BPJS Health Participants in In the era of the Covid 19 Pandemic and to study and analyze how can it be said that it is force majeure for participants who are unable to carry out their agreement?

E-mail:
elli.ruslina@unpas.ac.id

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1. Introduction

The government's attention to the health and quality of health of its citizens can be seen in the 1945 Constitution article 28 H paragraph (1) which reads "everyone has the right to live in physical and spiritual prosperity, to live and to have a good and healthy life and has the right to health services" (Budiono et al., 2019). Quality health services in question are health services in emergencies and disasters, health services that meet the needs of the community and are carried out in accordance with professional standards and ethics. Based on Law no. 40 of 2004 concerning Insurance and Law no. 24 of 2011 concerning the Social Security Administering Body, BPJS was formed which is an institution established to administer the National Social Security program and the BPJS Health program which aims to provide certainty of social protection and welfare for all Indonesian people (Kur'aini et al., 2019).

Currently, Indonesia is still haunted by the COVID-19 pandemic, a respiratory infection disease caused by SARS-CoV2. According to the World Health Organization (WHO) transmission is still ongoing. In Indonesia as of July 28, 2020, there are 100,303 confirmed cases, 4838 deaths and 1525 new cases. This disease can infect anyone whether they have government health insurance, such as BPJS and private/voluntary health insurance. On the other hand, it also affects workers in the formal and informal sectors. The expansion of this informal sector, member countries of the World Health Organization (WHO) are committed to developing a health financing system that ensures the availability of public access to health services and provides protection to them against income risks.

A survey conducted by the Center for Population Research (2019) in six provinces related to "Utilization of National Health Insurance" found that 24.5% of informal sector workers claimed to have experienced BPJS Health contributions in arrears, with an average length of arrears of six months. In fact, 6.9% of informal sector workers have BPJS Health cards in an inactive condition for the last 6 months (Burris et al., 2010; Ratnawati & Kholis, 2019; Suatmiati et al., 2019). The results of this survey also indicate that under ordinary conditions it is difficult for informal sector workers to pay contributions for independent BPJS participants, especially in the current COVID-19 pandemic conditions, it is certain that more and more informal sector workers will be in arrears in premiums and some may even drop out. Given the various problems mentioned above, the question is whether it can immediately be used as a force majeure reason not to carry out the agreement for BPJS Health insurance participants?

The government has issued several regulations in an effort to deal with covid 19, including: Presidential Regulation No. 64 of 2020 concerning Health Insurance. The issuance of this regulation in an effort to guarantee health to support the existence of Law no. 24 of 2007 which stipulates that disease outbreaks are one of the non-natural disasters that need to be managed with potential threats. And also Law no. 24 of 2011 concerning the Social Security Administering Body. For this reason, it is necessary to look at the comprehensive legislation in the field of BPJS, it is necessary to look at the existing laws and regulations related to insurance, observe the current reality and anticipate it. Based on the description above, the purpose of the study is to discuss the Legal Aspects of BPJS Membership in the Era of the Covid-19 Pandemic. Regarding the problems identified as follows: What are the Legal Aspects of BPJS Health Participants in the Era of the Covid 19 Pandemic? and how can it be said force majeure for participants who are unable to carry out the agreement?

2. Method

The research approach uses secondary data (library research), which is a method used by studying statutory documents, books and articles in journals related to the discussion material in the covid 19 pandemic. Secondary data is used to support the discussion of the Legal Aspects of BPJS Health Participants. The Era of the Covid-19 Pandemic.

3. Result and Discussion

3.1 Legal Basis for Regulating BPJS Health Participants in the Covid 19 Pandemic Era

The 1945 Constitution of the Republic of Indonesia is the constitutional basis. Article 28 H, paragraph (1) states that everyone has the right to live in physical and spiritual prosperity, to have a place to live and to have a good and healthy living environment and have the right to obtain health services. (Hafsa et al., 2019)

a. Act:

- 1) Law of the Republic of Indonesia Number 40 of 2014 concerning Insurance.
- 2) Law of the Republic of Indonesia Number 24 of 2011 concerning the Social Security Administering Body.
- 3) Law Number 40 of 2004 concerning the National Social Security System.
- 4) Law of the Republic of Indonesia Number 36 Year 2009 concerning Health.
- 5) Law Number 44 of 2009 concerning Hospitals.

b. Regulations under the Law

- 1) Presidential Regulation of the Republic of Indonesia Number 64 of 2020 concerning the Second Amendment to Presidential Regulation Number 82 of 2018 concerning Health Insurance
- 2) Regulation of the Health Social Security Administering Body Number 1 of 2014 concerning the Implementation of Health Insurance
- 3) Decree of the Minister of Health Number HK.01.07/MENKES/104/2020 concerning Determination of Corona Virus Infection
- 4) PMK Coordinating Minister for Human Empowerment and Culture Number: S.22/MENKO/PMK/III/2020 concerning the Special Assignment of Covid-19 Claim Verification, BPJS Health
- 5) Minister of Health Decree No. HK.01.07/MENKES/238/2020 concerning Technical Instructions for Claiming Reimbursement for Treatment of Certain Emerging Infectious Disease Patients for Hospitals Providing Coronavirus Disease 2019 Services
- 6) Minister of Health Circular Letter Number HK.02.01/MENKES/295/2020 concerning Claims for Reimbursement for Treatment of Certain Emerging Infectious Disease Patients for Hospitals Providing Services for Coronavirus Disease 19 (Covid-19).
- 7) Circular letter 834/VII-01/0520 regarding Services for JKN-KIS Participants during the Covid-19 Outbreak

3.2 Covid 19 and Legal Certainty

The Appeal Letter of the Secretary General of the Ministry of Health Number: PK.02.01/B.VI/839/2020 stated that Covid-19 is a disease that attacks the respiratory tract, caused by a virus that spreads through droplets / sprinkling of phlegm for which drugs and vaccines have not yet been found. Coronavirus is zoonotic (transmitted between animals and humans). Research says that SARS was transmitted from civet cats to humans and MERS from camels to humans. Meanwhile, the animal that is the source of the transmission of COVID-19 is still unknown. The average incubation period for COVID-19 is 5-6 days, with a range between 1 and 14 days but can be up to 14 days. The highest risk of transmission is obtained in the first days of the disease due to the high concentration of virus in the secretions. Infected persons can be directly infectious up to 48 hours before symptom onset (presymptomatic) and up to 14 days after symptom onset.

In general, health insurance in Indonesia can be divided into several types based on criteria (Schwartz et al., 2013; Siregar, 2018; Tunjungwulan & Hanani, 2019).

a. Ownership of the Organizing Body

There are two types of health insurance whose criteria are based on the ownership of the organizing body, namely government health insurance and private health insurance. Government health insurance, namely health insurance products managed by the government such as BPJS Health. Meanwhile, private health insurance is health insurance managed by a private entity.

b. Type of Treatment

Health insurance based on the type of treatment is divided into two types, namely inpatient health insurance (in-patient treatment). This health insurance pays for treatment for patients who will stay at the hospital, aka hospitalization. While out-patient health insurance is health insurance that pays for patient care in the form of medical services such as diagnosis, laboratory checks, treatment, rehabilitation, and other health services that do not require the patient to stay in hospital.

c. Participation

Based on participation, health insurance also consists of two types, namely mandatory health insurance and voluntary health insurance. In compulsory health insurance, everyone is required to make purchases and payments for insurance and to follow certain rules. In contrast to voluntary health insurance, where everyone has the freedom to choose insurance according to their wishes and needs, without being bound by a company or organization rule.

d. Costs covered

The type of health insurance can also be seen from the side of the costs borne. There are two types of health insurance, namely total dependents and high dependents only. In total dependent insurance,

health insurance will cover all types of health services ranging from treatment, recovery, prevention, inpatient and outpatient. Insurance claims will be adjusted to those stated in the insurance policy.

3.3 Legal Aspects of BPJS Health Participants in the Covid 19 Pandemic Era

The 1945 Constitution in Chapter XA concerning Human Rights, Article 28H paragraph (1) "everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment and have the right to obtain health services." Furthermore, it is stated in Article 34 paragraph (3) which mandates that "The state is responsible for the provision of proper health service facilities and public service facilities". The phrase "appropriate" can be interpreted that the state is not only responsible for providing modest health facilities, but also health facilities with certain standards that are considered appropriate (Furwon & Mulyadi, 2020; Widodo & Disantara, 2020).

In the Law of the Republic of Indonesia Number 36 of 2009 concerning Health, the Rights of Citizens are regulated. Article 4 states that everyone has the right to health. Article 5 states (1) Everyone has the same rights in obtaining access to resources in the health sector. (2) Everyone has the right to obtain safe, quality, and affordable health services. (3) Everyone has the right to independently and responsibly determine the health services needed for themselves.

The implementation of the National Health Insurance (JKN) is basically a mandate of the Law on the National Social Security System (SJSN) and Law Number 24 of 2011 concerning the Social Security Administering Body where health insurance is a guarantee in the form of health protection so that participants receive health care benefits and protection in meeting basic needs. Health care provided to every person who has paid contributions or whose contributions are paid by the government. In simple terms, the JKN developed by the government is part of the SJSN which is implemented using the mandatory (mandatory) social health insurance mechanism based on the SJSN Law (Syahrul et al., 2020). Therefore, all Indonesian residents are required to become participants in the health insurance managed by BPJS, including foreigners who have worked for at least six months in Indonesia and have paid premiums. The JKN program is a social security program that provides health protection and services for the entire community, with BPJS Health as the organizing body. Based on BPJS Health membership, it is divided into two, namely Contribution Assistance Recipients (PBI) with contributions fully borne by the government and Non-PBI participants with contributions borne by the participants.

Coronavirus Diseases 2019 (Covid 19) has been designated as a type of disease that causes a Public Health Emergency, taking into account the determination, efforts have been made to overcome one of them through the establishment of a referral hospital that can provide services for Covid 19 disease. Organizing COVID 19 services will receive reimbursement for the cost of treating patients with Covid 19 disease through submitting claims in accordance with the provisions in the Decree of the Minister of Health No. HK.01.07/MENKES/238/ 2020 concerning Technical Instructions for Claims for Reimbursement for Treatment of Certain Emerging Infectious Disease Patients for Hospitals Providing Coronavirus Disease 2019 Services.

This is in line with the previous regulation, namely, for the financing of patients being treated with certain Emerging Infectious Diseases including COVID-19 infection, they can be claimed to the Ministry of Health through the Director General of Health Services. This financing claim applies to patients who are treated in hospitals that provide services for Certain Emerging Infectious Diseases. Currently, PIE referral hospitals and other hospitals that provide services have been established certain infectious diseases based on the Decree of the Minister of Health.

The same statement was also conveyed in Jamkesnews, the Government has determined the financing of health services due to the Covid 19 virus or Corona virus. This has been stipulated in the Decree of the Minister of Health Number HK.01.07/MENKES/104/2020 concerning the Determination of Corona Virus Infection as a Disease That Can Cause Outbreaks. "All forms of financing in the context of mitigation efforts as referred to in the second dictum are borne by the budget of the Ministry of Health, regional governments, and/or other legal sources of funds in accordance with the provisions of the legislation," the second dictum of the Ministry of Health reads. Meanwhile, the Head of Public Relations of BPJS Kesehatan explained that the guarantee of health services in the National Health Insurance Program-Healthy Indonesia Card (JKN-KIS) refers to Presidential Regulation Number 82 of 2018 concerning Health Insurance. In Article 52 Paragraph (1) Point (o) related to Unsecured Benefits it is stated that one of them is health services due to disasters during the emergency response period,

extraordinary events or epidemics (Setiati & Azwar, 2020). "Currently the Minister of Health has determined that the Covid-19 Virus is an outbreak or Extraordinary Event (KLB). Of course, apart from illness/health services due to the Covid-19 virus and suspected cases of the Covid-19 virus, BPJS Kesehatan is guaranteed to comply with applicable regulations,"

The statement written in the media is in line with that stated in the Presidential Regulation of the Republic of Indonesia Number 82 of 2018 concerning Health Insurance. Article 1 Regarding Guarantees, in this Presidential Regulation what is meant by: 1. Health Insurance is Jamman in the form of health protection so that Participants obtain health care benefits and protection in meeting basic health needs that are given to everyone who has paid their Health Insurance Contribution or Health Insurance Contribution (Bjorkdahl & Druglitro, 2019). paid by the Central Government or Local Government. Article 52 (1) Health services that are not guaranteed include: a. health services that are not in accordance with the provisions of the legislation; b. health services provided at Health Facilities that do not cooperate with BPJS Health, except in an emergency; c. health services due to disasters during the emergency response period, extraordinary events/epidemic.

On the other hand, the government has issued a Decree of the Minister of Health of the Republic of Indonesia Number Hk.01.07/Menkes/238/2020 concerning Technical Instructions for Claims for Reimbursement of Costs for Treatment of Patients with Certain Emerging Infectious Diseases for Hospitals Providing Services for Coronavirus Disease 2019 (Covid-19). In CHAPTER II Implementation of Covid-19 Service Claims it is stated that A. Criteria for patients who can claim treatment costs 1. People Under Monitoring (ODP): a. ODP aged over 60 (sixty) years with or without comorbidities. b. ODP aged less than 60 (six) years with comorbidities. 2. Patients Under Surveillance (PDP) 3. Confirmation of COVID-19. Valid for Indonesian citizens and foreign nationals who are treated at hospitals in the territory of the Unitary State of the Republic of Indonesia.

In the Appendix of KMK No.Hk.01.07/Menkes/238/2020 concerning Technical Instructions for Claiming Financing for Certain Emerging Infectious Disease Patients for Hospitals Providing Services for Coronavirus Disease 2019 (Covid-19) it is stated that certain emerging infectious disease patients for hospitals that provide COVID-19 services. 2. Specific Objectives a. provide a reference for the Central Government, Provincial Government, Regency/Municipal Government, and hospitals that provide services for COVID-19 patients; b. provide a reference for health service claim verifier officers for COVID-19 patients; and c. provide certainty of fee waivers for COVID-19 patients. This is further strengthened by the Decree of the Minister of Health of the Republic of Indonesia Number Hk.01.07/Menkes/104/2020 concerning the Determination of Novel Coronavirus Infection (2019-Ncov Infection) as a Disease That Can Cause Outbreaks and Efforts to Overcome it, in decision point 4 states: all forms of financing in the context of The countermeasures as referred to in the Second Dictum shall be borne by the budget of the Ministry of Health, Regional Government, and/or other legal sources of funds in accordance with the provisions of the legislation.

Based on the regulation above, the government has provided health insurance for patients who are declared ODP, PDP and Confirmed Covid 19 in accordance with the criteria that apply in the regulation. Hospitals providing services for Coronavirus Disease 2019 (COVID-19) can apply for COVID-19 patient fee waivers for patients who have been treated since January 28, 2020, can submit claims to the Ministry of Health through the Director General of Health Services. This means that for all people, whether they are BPJS Health participants or not BPJS Health participants, if they are declared Covid in accordance with applicable regulations, they will get a guaranteed fee waiver (Jay, 2019).

The question is whether it can immediately be used as an excuse as a force majeure for Covid 19 not to carry out the agreement for BPJS Health insurance participants? UU no. In 2014 concerning Insurance, Article 1 states that insurance is an agreement between two parties, namely the insurance company and the policy holder, which is the basis for receiving premiums by the insurance company in return for providing reimbursement to the insured or policy holder due to loss, damage, costs incurred, loss of profits, or legal liability to third parties that may be suffered by the insured or the policy holder due to the occurrence of an uncertain event. On the other hand, it is stated in the SJSN Law that social insurance is a mechanism for collecting funds that are mandatory from contributions to provide protection against socio-economic risks that befall participants and/or their family members. Thus the

rights and obligations written in the agreement between the two parties listed in the insurance policy are the legal aspects that are accounted for. The conditions for a valid agreement are regulated in Article 1320 of the Civil Code. In order for a valid agreement to occur, it is necessary to fulfill four conditions, namely the agreement of those who bind themselves; the ability to make an engagement; a certain subject matter; a reason that is not forbidden.

In this situation of the Covid 19 pandemic, the Government has provided relaxation of payments for BPJS Health participants who are in arrears or have to bear fines. Relaxation is given for this year to help people deal with economic pressures in the midst of the Covid-19 pandemic. Participants who do not pay the dues are subject to a temporary suspension of the guarantee. This means that their membership status is disabled. Furthermore, in order to be active again as participants, they must pay the outstanding dues for a maximum of 24 months. As support during the pandemic, participant status can be regained by paying fees for a maximum of six months this year. The policy for relaxation or concession payments for JKN-KIS participants who are in arrears is regulated in detail in Article 42 of Presidential Regulation Number 64 of 2020.

4. Conclusion

The laws and regulations governing BPJS Health Participants in the Covid 19 Era include: Law No. 40/2004 concerning the National Social Security System, Law No. 36/2009 concerning Health, Law No. 44/2009 on Hospitals, PepPres No. 64/2020 concerning the Second Amendment to Presidential Regulation Number 82 of 2018 concerning National Health Insurance, BPJS Regulation No. 1/2014 concerning the Implementation of Health Insurance, KMK No. HK.01.07/MENKES/104/2020 concerning Determination of Corona Virus Infection. PMK No.: S.22/MENKO/PMK/III/2020 concerning Special Assignments for Covid-19 Claim Verification, BPJS Health, KMK No. HK.01.07/MENKES/238/2020 concerning Technical Instructions for Claims for Reimbursement for Treatment of Certain Emerging Infectious Disease Patients for Hospitals Providing Services for Coronavirus Disease 2019, SE No. HK.02.01/MENKES/295/2020 concerning Claims for Reimbursement for Treatment of Certain Emerging Infectious Disease Patients for Hospitals that Provide Coronavirus Disease Services, SE 834/VII-01/0520 concerning Services for JKN-KIS Participants during the Covid-19 Outbreak

Everyone with the following criteria: 1. People Under Monitoring (ODP): a. ODP aged over 60 (sixty) years with or without comorbidities. b. ODP aged less than 60 (six) years with comorbidities. 2. Patients Under Surveillance (PDP) 3. Confirmation of COVID-19. The government guarantees reimbursement claims for the treatment of certain emerging infectious disease patients for hospitals that provide coronavirus disease services. In terms of Agreements, BPJS Participation in the Covid Pandemic Era, the government has provided relaxation as regulated in Presidential Decree No. 64/2020 concerning the Second Amendment to Presidential Regulation Number 82 of 2018 concerning Health Insurance. Also regulated in Law no. 40 of 2014 concerning Insurance and the Civil Code Article 1320.

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