

Law Protection on Patients Toward The Health Services Conducted by Social Security Administrator for Health (SSAH) or BPJS in Accordance With The Limitation on Cataract Surgery

Chori Diah Astuti; Suherman; Arrisman

email: cdaastuti@gmail.com; suherman_upn@yahoo.com

Faculty of Law UPN Veteran Jakarta

Abstract: Health is a primary right of every individual and must be guaranteed by the state; therefore, the state has regulated the health of its citizens as stipulated in the 1945 Constitution Article 28 Section 3 which is further regulated in law No. 40 Year 2004 concerning the national social security system. One of the concerns of the government is that many Indonesians who have reached the age of 50-60 years who experience vision problems due to cloudy eye lense or cataract. The government concern is can be seen from their attention on health problems by passing Minister of Health Regulation No. 29 Year 2016. Concerning with eye Health Care Services at the Health Care Amanities and the Director of Health Service Security on Health (SSAH) passed a regulationNo. 2 Year 2018 concentering with cataract service security service. The Method Used in this study is a normative juridical method, using secondary data consisting of primary, secondary and tertiary legal materials. The end purpose of this study is to get clarity about the legal protection of patients against health services by the Health amenities and SSAH or BPJS with the existence of restrictions on cataract surgery and to find out the claim procedures concerning with this restriction.

Keywords: Legal Protection, BPJS or SSAH, Cataract Surger.

BACKGROUND

Health is a basic right of every citizen and the state is mandatorily responsible for it. There are plenty of strategies the government tries to endorse in accordance with health care including preventive actions, firstly, to avoid any possible deseas attact mankind, secondly, promotive action that is to empower the community to maintain and improvehealth level and thirdly, the currative action that is to provide excellent service for the sick people to be able to use the state health services.¹

Here are some legal basis why National Healt Services is promoted to become a unified health security for every citizen. First of all is the Universal Independence of Human Right declared on 10th of Decemebr 1948. Furthermore, in the Indonesian constitution year 1945 article 25 section (1) which states that every citizen has right to posess better living and his or her family, including the right on having food, clothing, housing, health services, social services including while unemployed, being sick, disable, widow/widower, rich an elderly age or any other causes that result in unprosperousity beyond his capasity to manage that caused him or her to live under the minimum living standard.” Another legal basis is article 34 section 4 of 1945 constitution that says The state is responsible in providing health ammenities services for the betterment of its people or for humanity reasons.²

¹ Teti Murniati, *Kajian Kepuasan Stakeholders Jaminan Kesehatan Nasional*, (Jakarta:PT.Kacindo Danatya,2015),hlm 1

² Kementerian Kesehatan Republik Indonesia, *Bahan Paparan Jaminan Kesehatan Nasional (JKN)*

In the year 2018, Social Security Administrator for Health (SSAH) or in Indonesian Language called BPJS published the policy on Health Services which aimed to provide excellent health services in an effective and efficient manner. The policy is formulated in the director regulations of health amenities services No, 2 Year 2018 about Cataract Health Services including the guarantee to provide cataract surgery with viruses less than 6/18 preoperative. With this limitation, people are worried about the possibility that cataract patients might increase significantly. There are varieties of response from the community. After the regulation applied, the health services decreased significantly resulting in the difficult situation for the social health care member. One of the community group who disagree with this regulation is doctors association. They recommended the cancellation of the director's regulation to the high court.³

Based on the Ministry Regulation Number 29 year 2016 about the guideline in eye health care services in the health care amenities, the global data about eyes disorders which is released by World Health Organization (WHO) is reported that approximately 180 million people in the world who suffer from eyes disorders, 40-45 millions are blind, 9 to 10 of them live in developing countries. From the total number of the eye disorders, it is concluded that 80% of eye disorders can be prevented or cured, and 50% of the blindness caused by cataract. Indonesia, based on the center of statistic bureau the total number of Indonesian elderly people will suffer from blindness and 41% caused by cataract compared with the year 1990.⁴

This type of research is normative law research which discusses law as norms or principles applied in day to day living community and it becomes the guideline in their daily social interactions.⁵ The conceptual approach of this research is based on legal approach and case approach. In this research, the data used is secondary data from three legal sources including primary law, secondary law and tertiary law.

RESEARCH PROBLEM

Based on the above explanations, it is clear that the problems in this research is how the law protection for the patients toward the health services conducted by the Social Security Administrator on the limitation of cataract surgery and the procedure of claim to Social Security Administrator for Health (SSAH).

RESEARCH METHODS

In conducting this research the writer uses normative juridical legal research methods. Normative juridical research is research to find out the positive law of a certain thing, event or problem. The type of data used in this study is secondary data, which consists of primary legal materials, secondary legal materials and tertiary legal materials. The primary legal material used in this study is the 1945 Constitution, Law No. 36 of 2009 concerning Health, the Ministry

Dalam Sistem Nasional, Tahun 2013

³ “3 Peraturan Direktornya Dibatalkan MA, Begini sikap BPJS Kesehatan-hukumonline.com”, 2018 diunduh dari <https://m.hukumonline.com/baca/2018/10/25>

⁴ Peraturan Menteri Kesehatan Republik Indonesia Nomor 29 Tahun 2016 Tentang Penyelenggaraan Pelayanan Kesehatan di Fasilitas Pelayanan Kesehatan

⁵ Ishaq H, *Metode Penelitian Hukum*, (Bandung: Alfabeta), 2017, hlm 66

Regulation Number 29 year 2016 about the guidelines for eye health care services in the health care amenities, The policy is formulated in the director regulations of health services amenities No, 2 Year 2018 about Cataract Health Services. While the secondary legal materials used in this study are legal materials that are supportive and provide an explanation of primary legal materials in the form of books, papers, reports or research results, scientific writings, materials or articles from the internet about cataracts in Indonesia. The approach method used in this study is the statutory approach. While the data collection techniques in this research are literature study and interviews. Researchers also use data processing methods through the process of editing and analyzing data qualitatively.

DISCUSSIONS

1. Law protection on patents in terms of health services of Social Security Administrator on the Limitation of Cataract Surgery.

National Social Security System is basically executing the government health program who are in charge of the legal protection certainty and national social prosperity for the whole people of Indonesia. This program allows every citizen to meet their basic need in case they get sick, in an accident, lost their job, being elderly or retired. The term of the System of National Social Security (SNSS) is by law written in the Act of Republic of Indonesia No. 40 year 2004 about SNSS which is defined as a legal body established to organize the mechanism in directing more than one body of Social Security Administrator for Health who are in charge of the national social security.⁶

The term SSAH in the Law of Republic of Indonesia No. 24 year 2011 article 1 point 1 of SSAH defines SSAH as legal body established to run the program of social security.⁷ The legal basis in running the social security is made in sequence in a hierarchical system:

- a. The 1945 Constitution of Republic of Indonesia. Article 28H Section (3): "every citizen has the right for social security that allows self-development as dignified human beings." Article 34 Section (2): "The state developed the system of social security for the whole people of Indonesia, to empower the weak society to become dignified human being. Section (3) : "The state is responsible for health care amenities in giving the excellent service for people as dignified human being."
- b. The Act No. 40 Year 2004 about the System of National Social Security.
To understand the System of Social Security, it is explained in article 2 of the Act of National System of Social Security that says, "National Social Security System is held based on the principle of humanity, benefit principle and legal certainty principle for the whole people of Indonesia."

There are three principles in implementing the national system of social security by which in the memory of explanation described as follows:

- 1) Humanity principle is related to the honor of human dignity.
- 2) Benefit principle is an operational principle describes the effective and efficient management.
- 3) Justice principle is a very basic principle.⁸

⁶ Ibid, hlm 26

⁷ Ibid, hlm 26

⁸ Ibid, hlm 4-5

In general, the aim of the system of national social security as stipulated in Article 34 Section (2) of Republic of Indonesia Constitution 1945 that says: "The state develops the social security for the whole people of Indonesia and empowering the weak community and the poor to become humanly dignified." The principle of National System of Social Security the legal Act and the social security system is explained in Article 4 of the Act that comprises 9 principles including cooperating principle, the principle by which the participants help each other by paying the monthly premium of the insurance monthly based on the level of the salary or the monthly income. The non-profit principle is the principle of the management of the insurance that focuses on the fund management that allows every participant to benefit from. The next principle is the principle of transparent or openness that is the easy and open access of complete, correct and clear information for every participant or member. Another principle is the precautionary principle which means that in the insurance management should be carefully, meticulously, safely and orderly. The next is the accountability principle by which the budget management and the execution of the program must be accurate and accountable. Further principle is portability, that is to provide a continuable guarantee despite the participants change their job or change their address anywhere in the country of Indonesia. The principle of participation as member of the insurance is mandatory which means that every citizen is mandatorily become the participant of the national social security system. Another principle is trust fund principle which means that the fund is obtained from the contribution of the participants that the management should arrange it for the betterment and for the advantage of the participants. Lastly, result management principle that is the use of social security is wholly contributed to the program development and the participants should take the most benefit from it. The principle means that the national budget management is that the dividend yield of share holder in which it should go back to the participants.⁹

- c. *The Law of Republic of Indonesia No. 24 Year 2011 about Health Insurance Provider Body. The principle of the law is the same as applied in the law of National Social Security System. In line with the principle, the law of Social Security Administrator for Health is aimed to provide the assurance in fulfilling the basic need for all the participants (Vide Article 3 Law of SSAH). The meaning of basic need is the decent living needs for every participant and or the member of the family for the commitment of providing prosperity of the whole people of Indonesia.*

Social Security Administrator for Health or SSAH is a body which is established using the Law of SSAH Article 7 section (1) which says that SSAH is a public legal body. As a public legal body, SSAH main task is to manage the relationship between the state and its apparatus and its citizens in accordance with public interests or public needs. With the public interest accommodated in a Law, it proves the essence and the presence of the state in providing excellent service for its people. It is the state program to give legal certainty for the social prosperity for the whole people of Indonesia. Based on the Law, SSAH is a public legal body and the change of the state owned enterprises is aimed to speed up the implementation of national social security for the whole people of Indonesia.¹⁰

⁹ Ibid, hlm 4-7

¹⁰ Ibid, hlm 31

Legally, SSAH owns and is responsible for the President of Republic of Indonesia. The The mechanisme of accountability and the report to the president is done through the Board of National Social Security by which the SSAH is positioned as the body to help the president in formulating the policy and to synchronize the implementation of the national social security. SSAH owns and has the responsibility on the participants including the management, and fund development using the principle of trust fund, also providing the policy of social security to the president of Republic of Indonesia.¹¹

SSAH has its function as social security runned based on the Article 5 Section (2) of Law of SSAH. The law is strongly deviding the SSAH into two parts that is Health for Social Security and Health Security for workers.¹² Health Social Security is aimed to obtain the program for working accident protection, life insurance, pension protection, and old age protection.¹³ To perform the function, SSAH do the tasks as follows:

- a. To accept the registration of the participants.
- b. To collect participants premiums and the the premiums from the employer.
- c. To receive the government aid.
- d. To manage the social security fund for the benefit of the participants.
- e. To collect the fund for social security
- f. To provide the coverage based on social security terms and requirements.
- g. To provide the information about the implementation of the program of social security for the participants and for public.¹⁴

In doing the job based on Article 10, SSAH has the authority to:

- a. Collect the premiums.
- b. Put the social security fund for short term investment and long term investment by considering liquidity aspects, solvability, alertness, fund security, and eduquate profit.
- c. To control and to check the compliance pay of the participants and the employer in fulfilling their obligations based on the law of National Social Security.
- d. To reach the agreement with the health ammenities about the size of payment to the health ammenities based on the standard tarrif set by the government.
- e. To make a work contract with the health ammenities.
- f. To apply the administrative sanctions to the participants and the employers who donot fulfill their obligations.
- g. To report the employer of the in chraged institution about the indiciplinary in paying the dues or in fulfilling other obligations based on the law.
- h. To enter an agreement cooperation with other parties in other to the implemmentation of the social security program.¹⁵

¹¹ Ibid, hlm 31

¹² Undang-Undang Republik Indonesia Nomor 24 Tahun 2011 Tentang Badan Penyelenggara Jaminan Sosial (BPJS), hlm 5

¹³ Ibid, hlm 6

¹⁴ Ibid, hlm 7

¹⁵ Ibid, hlm 8

- d. The government regulation No. 101 year 2012 about receiving the assistance of social security for health.
- e. President regulation No. 12 Year 2013 about Social Security as it is changed for several times and the last revision is the president regulation no. 28 year 2016 about the third revision to the regulation No 12 Year 2013 about Social Security.
- f. The Minister of Health Regulation No. 69 year 2013 about standard service charge on health security service at health amenities in the first level and the health amenities in higher level of the program of Social Security on Health.
- g. The Minister of Health Regulation No. 71 year 2013 about the health service on the national health security. The regulation is replaced with the Minister of Health regulation No. 99 year 2015.
- h. The Minister of Health Regulation No. 59 about health service rate in the health security program on the implementation of health security program.¹⁶

Law of National System of Social Security as stated in article 5 section (1) that SSAH must be established with legal basis. The actualization of the Article and in accordance with the the decree of Constitutional Court of Republic of Indonesia No. 007/PUU-III/2005 date 31 August 2005 the law of Social Security for Health Administrator is legislated. It is then, become the basis in establishing the SSAH which explicitly says that based on the law of SSAH, SSAH itself is legally established.

SSAH as stated in article 5 section (1) of SSAH law has the program of SSAH for the workers who run for the programs including: Work Accident Protection, Old Age Protection, Pension Protection and Death Protection.

Based on Article 60 Section (1) the Law of SSAH, SSAH starts running the program for health security on 1st of January 2014.¹⁷ SSAH in running the program is still not optimum as the government expected where SSAH is a legal body established to run the National Social Security. In 2018 there has been a policy of SSAH made to give the best effective and efficient service. The policy is contained in the regulation from director of health security service no. 2 year 2018 about cataract security service where one of them is about SSAH which guarantee the cataract surgery with viruses less than 6/18 preoperative. What we worry about with this limitation is that is that the number of people who suffer from this illness is rising. This policy from the director is made by SSAH and there are various response from public. What happened after the release of the policy is that the service on cataract illness is decreasing it contradicts to the moto of giving the excellence service to all the participanst of National Health Security. A party who disagree with this policy is the doctors community under Association of Indonesian doctors United (AIDU). They apply for the cancellation of the regulation of the director to the Supreme Court of Republic of Indonesia.¹⁸

¹⁶ Andika Wijaya, Hukum Jaminan Sosial Indonesia, Jakarta: PT. SINAR GRAFIKA, 2018, hlm 26-48

¹⁷ Ibid, hlm 31

¹⁸ “3 Peraturan Direktornya Dibatalkan MA, Begini sikap BPJS Kesehatan-hukumonline.com”, 2018 diunduh dari <https://m.hukumonline.com/baca/2018/10/25>

It is emphasized that the plaintiff is an incorporated organisation with various specialties of doctors who have a tight relationship with patients where they can position themselves on patients behalf in order that the laws or regulations may highly contribute to and benefits each party and the regulation from the bottom or lower level are in line with the top laws or regulations or policies.

As a doctor Association, the most important thing is how to implement the value and norms especially on the protection of the patients security that is how the doctors can protect the patients while the policy of the director on health security of SSAH reduced the doctors medical actions in handling the patients. In fact, the medical actions has been intervened by the director's policy no. 2 year 2018 resulted in the doctors responsibility to give the specific medical treatment for the patient's very best service. The intervention which is not in line with higher policy may result in unsynchronized regulation especially the lower regulation is on the contrary to the higher regulation and more than that the lower body are not competent on the subject matter. The doctors are certainly cannot do their best service to their patients.¹⁹

In formulating the research problems, the writer chooses the theory of Law Protection by Fitzgerald who says that the theory of Law Protection is aimed to integrate and to coordinate varieties of interests in the community because in one traffic of interest, the protection of the one's party interest is by limiting other parties interest.²⁰ Law of protection also formulated in the compilation of regulations which is able to protect one issue to another issue. The regulation made by the director of health service security which is seen in contrary or not in line with higher regulation even the board of Social Security are given the authority to do the monitoring and evaluation on the programs. They had decided to instruct the directors of SSAH to withdraw the regulation no. 2 Year 2018 with the following considerations:

- a) The director boards of SSAH do not have authority to determine the use or to determine the benefit of National Social Security which are coverable by SSAH. The use or the benefit of NSS by law is the authorization of the President of Republic of Indonesia.*
- b) The drafting and the enactment of the three directors regulation is not preceded by thorough research consulted to the board of national social security and every stakeholder.*
- c) The regulation is made to public without following the mechanism in drafting the law based on the law No. 40 Year 2004, Law No 24 Year 2011 and President Regulation No. 12 Year 2013.*

For that reasons, the director of SSAH regulation no 2 year 2018 is contradictive to the higher regulations and therefore the director's policy (regulation) is not valid and hence it doesn't have any binding legal force.²¹

¹⁹Direktori Putusan Mahkamah Agung Republik Indonesia (Putusan Nomor 59 P/HUM/2018), <https://putusan.mahkamahagung.go.id>

²⁰ Friedman W, Teori dan Filsafat Umum, (Jakarta:PT RajaGrafindo, 2015)

²¹Direktori Putusan Mahkamah Agung Republik Indonesia (Putusan Nomor 59 P/HUM/2018), <https://putusan.mahkamahagung.go.id>

In accordance with the Supreme Court Decision and based on the legal certainty theory, John Locke said that One of the state authority of the state is the formation of laws. It means that the process of legal drafting through the government as the agent with several terms and conditions.

There are some principles to follow:

- a) *The higher laws or regulations can be used as the basis of legal standing for the lower regulations.*
 - b) *The lower laws or regulations must be based on or follow or in line with higher laws or regulations.*
 - c) *The content of lower regulations may not diverge or contradictive to the higher regulations.*
 - d) *A regulation can only be revoked, replaced or changed with a higher or at least the same level with the new regulation.*
 - e) *The similar regulation if it is used to regulate the same cases, the new regulation must be effectively used and the older regulation is no longer valid despite it is not explicitly stated that the previous regulation is revoked.*
 - f) *The regulation for specific things must be prioritized then a more general regulation.²²*
2. *The procedure of SSAH claim in accordance with the limitation of cataract surgery service. The procedure of cataract surgery service based on the limitation made for the participants are including registration. Before becoming a participant, every cataract sufferer must register following legal procedure.*

Article 6 Section (1) of President Regulation on Health Security Service, it is said that the participants is compulsory for the whole people of Indonesia. Moreover, the meaning compulsory as it is formulated in Article 6 Section (1) of President Regulation on National Health Security Service (NHSS) is actually taken from one of the basic principles of Law of NHSS and Law of SSAH which explicitly states that the principle of the participants is compulsory. The principle that bind all citizens to become member of SSAH effective gradually.²³

The implementation of the participants is compulsory and it is arranged as follows:

- a. *The participation of health security become effective starting from 1 of January 2014 comprises:*
 - 1). *The recipient of contribution assistance on Health Security,*
 - 2). *Member of TNI (Indonesian Military Personnel) and the State Civilians in the Ministry of Defence and their families,*
 - 3). *Member of Police/State civilians in the Police of Republic of Indonesia and their families,*
 - 4). *Health Insurance participants from state companies, Indonesian Health Insurance and their families,*
 - 5). *The participants of Health Security Service from the state companies, Health Security for Employees and their families.*

²² Khairani, *Kepastian Hukum Hak Pekerja Outsourcing*, (Jakarta: PT RAJAGRAFINDO, 2016),

²³ Andika Wijaya, *Hukum Jaminan Sosial Indonesia*, (Jakarta: PT.SINAR GRAFIKA, 2018)

b. The obligatory in registering the participation in health security, beside it is stated in point a, there is also a provision says that:

- 1). The employer of a state company, big company, middle company, small company, due date of registration is 1 January 2015.
- 2). The employer of micro business, the due date of registration is 1 January 2016,
- 3). The self employed worker or non employee, the due date of registration is 1 January 2019.

The procedure of using SSAH for out patient care: 1). visiting the nearest health unit. The participants cannot directly demand the service, however, they need to visit the health facility where they were registered for the first time and they need to prove with SSAH card and their identity card. After doing phase one in health amenities level one and the medical examination has been done, the doctor can give the hospital references based on the online references of SSAH if a patient must be hospitalized. There are some terms and conditions a patient should prepare including the copy of family card, copy of ID card, copy of SSAH card, copy of letter of references from the doctor. 2). An academic effort to overcome this problem is initiated by John Rawls through the theory of Justice and Fairness. As a guidance, this is a principle which must be internalized in the social institutions. We really want to establish the founding of Justice and Fairness. It is said that "justice is the first virtue of social institutions, as truth is of systems of thought", said Rawls.²⁴

Being the principle of justice for institution it is not allowed to mess up with individual principles for justice toward the institutions. Anyone who is involved in an institution must for sure know about the terms and conditions applied to him or her and to other participants. The justice and fairness principles are applied to social institutions in which it is known as public institutions. Anyone in the institution understands that other people also know about the terms and conditions. The fairness principles that will be applied in the social order in the sense that it is for public. The regulation for certain part of the institution is normally known by those who are involved in it. The publicity of the regulations in the institution guarantee that people who are involved in that principle knows about the limitation and what are acceptable and what actions are not acceptable is understood.²⁵

CONCLUSIONS

The Law Protections of Patients on Health Services conducted by the Social Security Board on the cataract surgery is stipulated in the Indonesian five basic principles (Pancasila) The Indonesian constitution 1945 Article 28H Section 3, Article 34 section 2 and 3, Law No. 40 Year 04. About The System of National Social Security "established the program of national health security as a social security with the principles, aim or objective of the organization, and the procedure or mechanism on national health security program." Law No. 24 Year 2011 about Social Security Administrator for Health, President of Republic of Indonesia Regulation No. 12

²⁴ Sahya Anggara, Teori Keadilan John Rawls Kritik Terhadap Demokrasi Liberal, 2013, JISPO Vol I, Januari-Juni 2013, hlm. 2

²⁵ John Rawls, Teori Keadilan: Dasar-dasar Filsafat Politik untuk Mewujudkan Kesejahteraan Sosial dalam Negara (Yogyakarta: Pustaka Pelajar, 200), hlm. 67.

Year 2013 about Health Security, Health Minister of Republic of Indonesia No. 71 Year 2013 about Health Services on the National Health Security Service. The legal basis of the study is written in order of hierarchy, it has suitability and binds with each other. The procedure to apply a claim to SSAH for the health service particularly on cataract surgery, there is a general terms that the patients need to understand. The participants must apply for having the health service at the first level of health amenities where they are first registered. The participants need to show the documents of SSAH valid card and valid ID card. If the patient has done the process in phase one and the health service is done, the patient needs to prepare additional documents including family card, ID card, and SSAH valid card. If the letter has been printed out, the treatment card can be used to see a specialist or a doctor who is in charge of the patient. The doctor will then explain in detail of why the patient is hospitalized or only need out patient care. If the diagnose indicates that the hospital does not have capacity to do the medical treatment, the doctor will give the reference to a better hospital. If for example, the patient needs a medical surgery, the doctor must give a reference to another hospital with much more sufficient health amenities. All the process starting from registration until the process of medical surgery at a hospital it is for sure that all of the participants and the family are compulsorily understand it.

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