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Services from the Healthcare and Social Security Agency (BPJS) at Bankrupt Hospitals

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Abstract: In Indonesia, there has been an increase in the number of hospitals declared bankrupt, which has a significant impact on the implementation of the National Health Insurance (JKN) managed by the Health Social Security Administration. Hospitals as BPJS strategic partners face challenges in fulfilling health service obligations due to financial pressures and Bankruptcy Legal status, which can threaten the rights of participants to obtain decent health services. This situation reflects the urgent need for legal mechanisms that protect the rights of participants and ensure the sustainability of health services in the midst of economic and legal dynamics. This study aims to examine the obligations of health services to BPJS Kesehatan participants in hospitals that are experiencing bankruptcy, and analyze the legal basis that governs it. This issue is important considering that there is a potential conflict of interest between the hospital bankruptcy process and the obligation of sustainable health services to BPJS Kesehatan participants. This study uses normative juridical method by reviewing relevant regulations, such as Law No. 24 of 2011 on BPJS, Law No. 40 of 2004 on National Social Security System, and Law No. 37 of 2004 on bankruptcy and PKPU and conceptual approach to analyze the legal obligations of hospitals in bankruptcy conditions in providing health services and protecting the rights of BPJS Health participants. The results showed that the obligation to provide health services to BPJS Health participants remained based on the principle of protection of the right to health as mandated in the legislation. This study recommends the need for special legal protection mechanisms and coordination between the bankruptcy curator, BPJS Kesehatan, and the government to ensure the continuity of health services in hospitals experiencing bankruptcy.

Keyword: BPJS Kesehatan, Bankruptcy, Hospital, Health Services.

INTRODUCTION

In recent years, Indonesia has seen an increase in the number of hospitals declared bankrupt. Data from the Ministry of Health shows that by 2023 there will be 3,155 hospital units in Indonesia, of which 58.6% are privately managed (Mary Liziawati et al, 2023). Challenging economic conditions, ineffective financial management, and other operational pressures have caused some private hospitals to experience financial difficulties leading to

bankruptcy (Rony Wahyu Hidayat, 2014). Hospital insolvency creates complexities in the legal relationship between hospitals and BPJS Kesehatan. As a strategic partner in the National Health Insurance (JKN) system, hospitals have an obligation to provide health services to BPJS participants in accordance with the agreed cooperation agreement. However, bankruptcy status may affect the hospital's ability to fulfill these obligations, including payment of claims and provision of adequate health services (Hilda Yunita Sabrie et al, 2022) .

According to Law No. 24/2011 on Social Security Organizing Agency jo. Presidential Regulation No. 82/2018 on Health Insurance, BPJS Kesehatan is responsible for ensuring the availability of health services for JKN participants through cooperation with health facilities, including hospitals. However, when a hospital is declared bankrupt, the cooperation agreement may be affected, creating legal uncertainty regarding the rights and obligations of both parties. Prof. Dr. Budi Santoso, a health law expert from the University of Indonesia, stated that "the bankruptcy status of hospitals can disrupt the continuity of health services and lead to complex legal implications in the relationship with BPJS Kesehatan." This situation demands clear regulations and legal protection mechanisms for BPJS Kesehatan participants. The government needs to ensure that even if a hospital goes bankrupt, participants' rights to obtain health services are still guaranteed. This is in line with the mandate of Law No. 40/2004 on the National Social Security System, which emphasizes the importance of social protection for all Indonesians (Budi Santoso, 2012).

The risk of disruption of health services due to bankruptcy status is very real in bankruptcy conditions, hospitals can experience difficulties in providing services in accordance with the standards regulated in Minister of Health Regulation No. 3 of 2020 especially in fulfilling facilities, infrastructure, and medical personnel. Bankruptcy verdicts against hospitals can have a significant impact on the community, one of the direct impacts is the potential violation of the rights of BPJS participants to obtain access to proper health services, as guaranteed in Article 4 paragraph (1) of Presidential Regulation No. 82/2018 concerning Health Insurance. When hospitals are unable to fulfill service obligations due to financial and legal pressures, the rights of BPJS participants who have paid premiums can be neglected. The uncertainty of legal protection for BPJS participants in this situation is also a serious problem. According to Article 52 paragraph (1) of Law No. 40/2004 on the National Social Security System, BPJS participants have the right to obtain health services in accordance with medical needs. Prof. Mulyani Wibowo, a health law expert from the University of Indonesia, highlighted that BPJS participants need legal clarity and real protection in this situation. "The bankruptcy condition of hospitals should not sacrifice the fundamental rights of BPJS participants who have fulfilled their premium payment obligations," she said.

There is a conflict of legal interest that arises in the process of settling BPJS claims in the midst of restructuring the obligations of hospitals declared bankrupt, in Article 56 of Law No. 37 of 2004 concerning Bankruptcy and PKPU, the priority of debt settlement in bankruptcy proceedings often prioritizes creditors (Novie Afif Mauludin, 2023). This has the potential to delay or even reduce the payment of BPJS Health claims needed to support medical services. Dr. Susanto, a business and health law expert, mentions that current regulations do not provide adequate protection for BPJS claims in the context of bankruptcy. He suggested a policy revision to ensure BPJS has a strong legal position in the bankruptcy scheme (Riris Katharina, 2021).

Research on the legal impact of bankruptcy decisions on hospitals in the context of contract implementation with BPJS Kesehatan aims to explore the legal implications that arise, both for hospitals, BPJS Kesehatan, and health service participants. Based on Article 1267 of the Civil Code, the inability of one party to fulfill contractual obligations may lead to the cancellation or adjustment of the contract, potentially creating uncertainty for the parties in the JKN scheme. The main objective of this study is to provide a comprehensive analysis of the legal impact and how existing regulations can protect the rights and obligations of each party.

Prof. Hery Santoso, a civil law expert from Universitas Airlangga, emphasized that there needs to be an adaptive legal mechanism to handle insolvency without compromising the principles of contract and service responsibility. In addition, this research also aims to offer a balanced legal solution that not only protects the rights of hospitals and BPJS but also ensures that the rights of healthcare participants are still fulfilled. This solution includes a regulatory revision that strengthens BPJS Kesehatan's position in priority claims when hospitals go bankrupt, as stipulated in Article 55 of Law No. 37/2004 on Bankruptcy and PKPU.

This conflict of interest raises questions about how legal protection for BPJS Kesehatan participants who need health services from hospitals that are in the process of bankruptcy. Can bankruptcy be an excuse for hospitals to refuse to provide health services to BPJS Kesehatan participants? How is the legal settlement of the obligation of bankrupt hospitals to provide health services? By analyzing various cases and current regulations, the results of this study are expected to serve as recommendations for policy makers to strengthen regulations that protect all parties in the health system, including hospitals, BPJS, and the public as the main beneficiaries of health services. The combination of theoretical approaches and practical solutions will serve as a foundation in ensuring a more resilient and equitable national health system (Firdaus Firdaus, 2018).

METHOD

To assist the author in preparing this research, the author uses a normative juridical research method (Abdulkadir Muhammad, 2004: 52), namely by examining the application of rules or norms in applicable positive law and what happens in reality in practice. The approach methods used are statute approach and conceptual approach.

The statutory approach is used to examine in depth the relevant regulations, such as Law No. 24/2011 on BPJS, Law No. 40/2004 on the National Social Security System, and Law No. 37/2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU) (Peter Mahmud Marzuki, 2016).

A conceptual approach is used to understand the legal principles underlying the obligations of hospitals and BPJS in protecting people's rights to health services, especially in the context of hospital bankruptcy (Ibid, 178).

The sources of legal materials used in this research consist of primary legal materials in the form of laws and regulations, secondary legal materials in the form of legal literature, research results, and scientific journals, and tertiary legal materials in the form of legal dictionaries and encyclopedias (Soerjono Soekanto, 2014). The analysis of legal materials is carried out qualitatively using the legal interpretation method to obtain a comprehensive picture of the problem under study.

RESULTS AND DISCUSSION

Obligations of Health Services to BPJS Health Participants Based on Legislation Legal Basis for the Implementation of BPJS Health

The national health insurance program through BPJS Kesehatan has a strong legal basis in the Indonesian legislative system. The following are the main legal bases for the implementation of BPJS Kesehatan:

1. Constitution of the Republic of Indonesia Year 1945.

Article 28H paragraph (1) of the 1945 Constitution states that "Everyone has the right to live in physical and mental prosperity, to have a place to live, and to have a good and healthy environment, and to receive health services (Constitution of the Republic of Indonesia, 1945)." Article 34 paragraph (2) also affirms that "The State develops a social security system for all people and empowers the weak and incapable in accordance with human dignity (Constitution of the Republic of Indonesia, 1945)."

2. Law No. 40/2004 on the National Social Security System.

This law became the basis for the establishment of the national social security system, including the health insurance program. Article 19 paragraph (1) states that "Health insurance is organized nationally based on the principle of social insurance and the principle of equity (Constitution of the Republic of Indonesia, 1945)."

3. Law No. 24/2011 on the Social Security Provider Agency.

This law specifically regulates the establishment of BPJS Kesehatan, in Article 9 paragraph (1) states that "BPJS Kesehatan as referred to in Article 5 paragraph (2) letter a functions to organize health insurance (Law No. 40/2004)."

4. Law Number 36 Year 2009 on Health.

This law regulates the rights and obligations of every person in obtaining safe, quality and affordable health services (Law Number 36, 2009).

5. Presidential Regulation No. 82/2018 on Health Insurance

This Presidential Regulation regulates in more detail the implementation of the health insurance program, including cooperation between BPJS Kesehatan and health facilities (Presidential Regulation No. 82, 2009).

Hospital Obligations in Health Services

The obligations of hospitals in providing health services are regulated in several laws and regulations, among others:

1. Law Number 44 of 2009 concerning Hospitals.

Article 29 paragraph (1) letter b states that hospitals have the obligation "to provide safe, quality, anti-discrimination, and effective health services by prioritizing the interests of patients in accordance with hospital service standards (Law Number 44, 2009)."

2. Minister of Health Regulation Number 71 Year 2013 on Health Services in the National Health Insurance.

This Permenkes regulates the obligations of health facilities, including hospitals, which cooperate with BPJS Kesehatan in providing health services to BPJS Kesehatan participants (Minister of Health Regulation, 2013)

Cooperation Agreement between BPJS Kesehatan and Hospital.

This agreement regulates the rights and obligations of hospitals in providing health services to BPJS Kesehatan participants, including service standards, tariffs and payment mechanisms (Hasbullah Thabrany, 2015).

Implications of Hospital Bankruptcy for BPJS Health Services

Hospital bankruptcy has various implications for health services, especially for BPJS Kesehatan participants. Some of the implications that occur include the following:

1. Uncertainty of Service Sustainability

Hospitals that experience bankruptcy are under the management of a curator who is tasked with liquidating assets to pay debts to creditors (Rahayu Hartini, 2017). This condition creates uncertainty regarding the continuity of hospital operations, including services to BPJS Kesehatan participants.

2. Potential Decrease in Service Quality

Limited resources and the curator's focus on debt settlement can lead to a decrease in the quality of health services in bankrupt hospitals (Pulton Idrus, 2012). This has an impact on the fulfillment of health service standards that should be received by BPJS Kesehatan participants.

3. Limited Access to Health Services

Hospital insolvency can lead to partial or complete cessation of health services, thus reducing BPJS Kesehatan participants' access to needed health services (Hasbullah Thabrany, 2015).

4. Risk of Rejection of BPJS Health Patients

The financial pressure and uncertainty of claim payments by BPJS Kesehatan to bankrupt hospitals may cause hospitals to refuse or limit the admission of BPJS Kesehatan participant patients (Ibid).

The legal consequences of a bankruptcy decision on the rights and obligations of hospitals in their relationship with BPJS Kesehatan reflect the complexity of legal aspects involving various stakeholders. As a health service provider institution, the hospital has a contractual relationship with BPJS Kesehatan that is regulated through a cooperation agreement, which contains the hospital's obligation to provide health services to BPJS participants and receive claim payments for these services (Solikah Sriningsih,,2021). However, when a hospital is declared bankrupt, its legal status, contractual obligations, and operational capacity undergo fundamental changes.

Legal Status of Hospitals in Bankruptcy

Bankruptcy is regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU) in Article 1 point 1 of the Bankruptcy and PKPU Law, "Bankruptcy is a general confiscation of all assets of the Bankrupt Debtor whose management and management is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law (Law Number 37, 2004)."

In the context of hospitals, bankruptcy has legal implications for the management of hospital assets and the sustainability of its operations. After the bankruptcy verdict, the management of the hospital's bankruptcy assets passes to the curator, but it should be noted that bankruptcy does not automatically stop the hospital's operational activities (Rahayu Hartini, 2017). Article 24 paragraph (1) of the Bankruptcy and PKPU Law states that "The debtor by law loses his right to control and manage his assets included in the bankruptcy estate, from the date the bankruptcy declaration is pronounced (Law Number 37, 2004)."

Hospitals as health care institutions have special characteristics compared to other business entities. The existence of hospitals is closely related to the public interest, especially in the fulfillment of the right to health (Hermien Hadiati Koeswadi, 2002). Therefore, even if a hospital goes bankrupt, there are special considerations regarding the sustainability of its health services.

The hospital's contractual relationship with BPJS Kesehatan remains legally binding, but its implementation is under the control of the receivers, who are tasked with balancing the interests of creditors, patients, and the continuity of health services (Rahmat Hidayat Suadu, 2015). In addition, significant changes occur in the hospital's operational capacity due to limited access to financial resources during the insolvency process. Hospitals may experience difficulties in fulfilling their contractual obligations to BPJS Kesehatan, such as providing optimal healthcare services to BPJS participants or paying claims submitted. This may disrupt the continuity of services, ultimately affecting patients' rights as BPJS Kesehatan program participants (Liza Dzulhijjah, et al).

In the context of administrative law, BPJS Kesehatan has the authority to supervise partner hospitals to ensure that services to BPJS participants continue (Budi Setiyono, 2018). In a bankruptcy situation, this supervision becomes more complex due to the limited resources of the hospital and the role of the curator as the party responsible for asset management. Bankruptcy verdicts also affect the legal relationship between hospitals and patients. In the event of bankruptcy, patients who receive health services from hospitals have the right to receive proper services according to the standards stipulated in laws and regulations, including Law No. 44/2009 on Hospitals. Hospitals and receivers must ensure that patients' rights are not neglected despite the difficult financial situation. This includes the settlement of claims that have been submitted by participants through BPJS Kesehatan.

From a contract law perspective, the bankruptcy verdict poses challenges in the application of the principle of *pacta sunt servanda* that binds the agreement between the hospital and BPJS Kesehatan. In bankruptcy, hospitals may not be able to perform their obligations as stipulated in the contract (Rahmi Zubaedah et al, 2019). Therefore, the receivers and BPJS Kesehatan need to collaborate to find a solution that can minimize the negative impact on patients and the continuity of hospital operations. A bankruptcy verdict has legal consequences in the form of transferring the management of hospital assets to a court-appointed curator (Lilies Anisah et al, 2022). In this context, the contractual relationship between the hospital and BPJS Kesehatan remains valid, but its implementation is under the control of the curator.

Munir Fuady argues that in a bankruptcy situation, the management of contractual obligations must be done carefully to ensure a balance between the interests of creditors, debtors, and third parties. In the case of hospitals, this approach means ensuring that health services remain a top priority despite financial pressures (Putu Eka Trisna Dewi, 2020). On the other hand, H.L.A. Hart in his theory of law highlights the importance of continuity in the implementation of legal rules, including in emergency situations such as bankruptcy (Rifqon Khairazi et al, 2020). In the context of hospitals, this means that health services should not be disrupted even though the hospital is in the process of bankruptcy.

Another legal implication is related to dispute resolution between hospitals and BPJS Kesehatan. These disputes may include contract interpretation, priority of claim payment, or responsibility for outstanding health services. Therefore, a comprehensive approach and effective coordination between all relevant parties is required to ensure that health services continue to run smoothly. This involves cooperation between hospitals, receivers, BPJS Kesehatan, and the government, with the aim of achieving a balance in the fulfillment of patient rights, settlement of hospital obligations to creditors, and continuity of health service operations. Strengthening regulations, applying the principles of fairness in dispute resolution, and efficient supervision mechanisms are also very important aspects to ensure that hospital bankruptcy does not interfere with the quality of health services provided to the community.

Legal Protection for BPJS Participants in Hospital Services Declared Bankrupt

Legal protection for BPJS Kesehatan participants who use the services of hospitals declared bankrupt is a very important issue in the context of health social security in Indonesia. When a hospital goes bankrupt, all of its operational activities can be disrupted or even stopped, potentially causing disruption to health services for patients, including BPJS participants who are receiving treatment.

Therefore, it is important to understand how the law protects the rights of BPJS participants in this uncertain situation. It is important to understand that a hospital's bankruptcy status does not automatically reduce BPJS Kesehatan's obligation to provide protection to its participants. Law No. 40 of 2004 on the National Social Security System (SJSN) states that the state through the social security organizer, in this case the BPJS, must provide guaranteed access to health services without discrimination, even if a registered health care provider is experiencing financial difficulties or even bankruptcy.

In practice, when a hospital goes bankrupt, BPJS Kesehatan can divert patients to get treatment at other hospitals that are still cooperating. BPJS has an obligation to ensure that participants are not hampered in receiving the medical services to which they are entitled, regardless of the financial condition of the healthcare provider. At the consumer protection level, Law No. 8/1999 on Consumer Protection also provides guarantees for BPJS participants as consumers of health services.

Article 4 of the law emphasizes that consumers have the right to obtain clear information about products or services received, including the right to obtain health services that are in accordance with what was promised. If the hospital where a participant receives health services goes bankrupt, BPJS Kesehatan is responsible for providing clear and precise information on

the steps to be taken by participants, as well as providing alternative health services that are equivalent. This protection also requires BPJS not to reduce the quality of service simply because of a change in service provider. In this regard, BPJS must maintain transparent communication and provide full support to participants to ensure their rights remain secured, despite this challenging situation.

The legal protection of patients cannot be separated from the rights stipulated in Law Number 40 of 2004 concerning the National Social Security System (SJSN) and other related regulations, such as Law Number 24 of 2011 concerning the Social Security Organizing Agency (BPJS). BPJS Kesehatan as a legal entity assigned to manage national health insurance, has the obligation and responsibility to ensure that participants can receive health services at hospitals that cooperate with BPJS.

BPJS Kesehatan's responsibility is to ensure that participants who need health services can access them easily, without being constrained by the situation or condition of a particular hospital, including if the hospital is bankrupt. When a hospital registered in the BPJS network is declared bankrupt, BPJS Kesehatan not only faces problems in terms of settling payment claims, but also needs to ensure that participants who need medical services at the hospital are not hindered by the condition.

Legal experts also argue that in the situation of a bankrupt hospital, BPJS Kesehatan must act immediately to find a solution that can minimize the impact on participants. According to Prof. Dr. Mochtar Kusumaatmadja, an international law expert, the principle of social justice in the social security system must ensure that every participant obtains their rights fairly and equally, without any party being disadvantaged, even in emergency conditions. Similarly, the views of other legal experts, such as Dr. Harkristuti Harkrisnowo, emphasize that one of the main roles of BPJS Kesehatan is to provide health rights guarantees for all participants, including in uncertain situations such as hospital bankruptcy. In this case, BPJS is expected to have a flexible and responsive system to overcome challenges arising from unforeseen circumstances.

BPJS Kesehatan as a legal entity given the responsibility to guarantee participants' rights to health services must be able to provide adequate alternative solutions, in accordance with the provisions stipulated in the SJSN and BPJS Laws. Thus, BPJS Kesehatan is not only responsible for resolving administrative and claim issues, but also ensuring that the medical services needed by participants can still be received despite constraints on health service providers.

BPJS Kesehatan participants face a number of legal challenges that may affect their right to healthcare. When a hospital that cooperates with BPJS Kesehatan goes bankrupt, the problems that arise not only relate to the continuity of the hospital's operations, but also touch on the issue of debt owned by the hospital. A bankrupt hospital will undergo a legal process regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU), which includes the distribution of hospital assets to creditors in accordance with applicable regulations.

In this case, BPJS Kesehatan, as a creditor who has an obligation to pay for the treatment of participants, has rights that must be recognized and protected in the bankruptcy process, as stipulated in Article 7 of the Bankruptcy Law. In this case, if the hospital does not have enough assets to pay all its debts, then claims from unsecured creditors, such as BPJS Kesehatan, may be prioritized on a lower scale.

This has the potential to cause BPJS to experience difficulties in paying claims submitted by participants, which of course can have an impact on the quality of services received by BPJS participants who depend on hospitals that are experiencing bankruptcy. In the opinion of Titi S. Sutama, who emphasizes that the right to health is a basic right that must be maintained, and should not be influenced by external factors such as financial problems that occur in health service providers. Therefore, even if a hospital that cooperates with BPJS Kesehatan is declared

bankrupt, BPJS still has an obligation to ensure that the rights of registered participants remain protected, and participants can obtain health services as promised.

If the insolvent hospital does not fulfill its obligation to provide medical services as promised to the participant, the BPJS participant can submit a claim to BPJS, which in turn will reimburse the cost of treatment at another hospital. It should be noted that in practice, many participants may not be fully aware of this mechanism or have difficulties in obtaining reimbursement for the services they have received. Therefore, it is important for BPJS Kesehatan to educate participants so that they are aware of their rights in dealing with this kind of situation. In addition, the government's role is also crucial in keeping the social security system running fairly and effectively, even when one of the providers, such as a hospital, experiences financial difficulties that lead to bankruptcy.

From a legal perspective, the role of BPJS Kesehatan as a health social security organizing body is not only limited to managing claims or payments to hospitals, but also includes protecting the rights of participants to continue to get equal and fair access to health services, even in situations of hospital bankruptcy. This legal protection reflects the state's commitment to safeguard the basic rights of every citizen to health, in accordance with the constitutional mandate. BPJS Kesehatan, as the agency tasked with managing national health insurance, must be able to face this challenge by providing adequate alternative services for participants, ensuring that their rights remain protected without exception.

CONCLUSION

A bankruptcy verdict against a hospital has significant legal implications, especially in ensuring the continuity of health services to BPJS Kesehatan participants. While the legal status of a bankrupt hospital may affect its capacity to fulfill contractual obligations, continued access to healthcare must still be guaranteed through close cooperation between the receivers, BPJS Kesehatan, the hospital, and the government.

BPJS Kesehatan plays a key role in guaranteeing participants' rights, both through transferring services to other affiliated facilities and providing alternative solutions, in accordance with the principles of social justice in the National Social Security System. With strong regulatory oversight and cross-party collaboration, guaranteed health services for participants can still be realized even if hospitals face financial or operational constraints due to bankruptcy.

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