

THE RESPONSIBILITY OF SOCIAL SECURITY ORGANIZING AGENCY (BPJS) WHEN PARTICIPANTS ARE REJECTED BY HOSPITAL IN THE PERSPECTIVE OF CIVIL AGREEMENT LAW

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Abstract

BPJS participants often experience discrimination by hospitals, hospital services for general patients and BPJS participants are very different. The purpose of this research is to analyze Position of Health Insurance Agreement and to analyze Liability of the Social Security Agency in the Case of Rejection of BPJS Participants by Hospitals in the Perspective of Civil Agreement Law. The method used in this study was normative method. Normative legal research in its development is research that uses the study of legal behavior concluded in legislation. BPJS neglect of its participants when there is a rejection by its partner hospitals is an act of default for BPJS participants. So it is clear that the neglect of BPJS towards its participants in the issue of rejection of BPJS participants by BPJS partner hospitals is clearly an action that violates the obligations, duties, and responsibilities of BPJS towards BPJS participants, this is not in accordance with what is promised in the health social security agreement made by BPJS with its participants.

Keywords: Agreement; Civil; Health Insurance.

A. INTRODUCTION

The state mandates the fulfillment of health services that are equitable and equitable for all groups of society, this is clearly stated in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that "every resident has the right to health services".¹ This mandate is also evident in Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that "the state develops a social security system for all people and empowers the weak and incapable in accordance with human dignity". The constitutional mandate to guarantee the fulfillment of health services for all groups of people in Indonesia is then operationalized in the policy of implementing social security as stipulated in the Law No. 40 of 2004 concerning the National Social Security System, the spirit of the formation of the National Social Security System Law is to realize the welfare of the community through equitable efforts to provide balanced health insurance services for all groups

¹ Yunita Syofyan Delfina Gusman, Studi Perbandingan Sistem Jaminan Sosial Antara Indonesia Dan Malaysia Dalam Rangka Pemenuhan Hak Kesehatan di Indonesia, *UNES Journal of Swara Justisia*, Vol. 7, No. 1, 2023, page.208-219

of society, this is expressly stated in points a and b of the preamble of the Law No. 40 of 2004 concerning the National Social Security System.

The preamble of the Law No. 40 of 2004 Concerning the National Social Security System is the background principle underlying the regulatory system in the Law No. 40 of 2004 Concerning the National Social Security System, where the principle underlying the Law No. 40 of 2004 Concerning the National Social Security System is contained in Article 2 of the Law No. 40 of 2004 Concerning the National Social Security System which states that "the National Social Security system is organized based on the principles of humanity, the principle of benefits, and the principle of social justice for all Indonesian people". The principle of the implementation of social security as stipulated in Article 2 of Law No. 40 of 2004 Concerning the National Social Security System is a reference for the purpose of implementing social security as stated in Article 3 of Law No. 40 of 2004 Concerning the National Social Security System which states that "the National Social Security system aims to provide guarantees for the fulfillment of the basic needs of a decent life for each participant and / or his family members".²

Based on the function of the Social Security Organizing Agency (*BPJS*) as referred to in Article 9 of Law No. 24 of 2011 concerning the Social Security Agency, the *BPJS* also has several duties, the obligations of the *BPJS* are regulated in Article 10 of Law No. 24 of 2011 concerning the Social Security Agency which states that, in carrying out the functions as referred to in Article 9, *BPJS* is tasked by:

Conducting and/or accepting the enrollment of Participants, to self register / *PBPU* participants do not need to come and queue at the *BPJS Kesehatan* office because administrative services can be done by accessing administrative services through the website or *BPJS* mobile application.³

BPJS has the duty to collect and collect contributions from Participants and employers registered with *BPJS*, and for that *BPJS* is authorized to collect contribution payments to *BPJS* participants.⁴

Receiving contribution assistance from the government. *PBI* participants will receive government assistance in terms of contribution payments. Contribution is a sum of money paid regularly from participants to be able to get health care benefits from this program.⁵

Managing the Social Security Fund for the benefit of Participants. The results of the management of social security funds are used entirely for program development and for the greatest benefit of participants. The

2 Sentosa Sembiring, *Himpunan Undang-Undang Lengkap Tentang Asuransi Jaminan Sosial*, Bandung, Nuansa Aulia, 2006, page.20.

3 Ayuning Budiati, Kesiapan Pelaksanaan "Dynamic Governance" Dalam Peningkatan Kualitas Pelayanan Badan Penyelenggara Jaminan Sosial (Bpjs) Kesehatan Di Kantor Layanan Operasional Kabupaten Lebak Provinsi Banten, *JIPAGS: Journal of Indonesian Public Administration and Governance Studies*. Vol. 3, No. 2, 2023, page.577-614

4 Harry Hazarul, Efektifitas Badan Penyelenggara Jaminan Sosial (Bpjs) Kesehatan Dalam Perlindungan Hukum Tenaga Kerja Di Kabupaten Bogor, *Jurnal Ilmiah Living Law*, Vol. 8, No. 1, 2016, page.35-41

5 <https://www.online-pajak.com/seputar-pph21/beda-bpjs-pbi-dan-non-pbi> Accessed on 1 September 2023

principle of the results of the management of the National Social Security Fund in this Law is the results in the form of dividends from shareholders which are returned for the benefit of social security participants. The contributions that have been paid by the participants will then be managed by *BPJS Kesehatan*. *BPJS Kesehatan* makes payments to Health Facilities that provide services to Participants.⁶

Collecting and managing data on Social Security program participants. Manage social security funds fully for program development and in accordance with the interests of participant.⁷

Paying benefits and/or financing health services in accordance with the provisions of the Social Security program. The role of the state in fulfilling the basic needs of the people is very necessary, especially in the form of comprehensive health services, by recognizing health as one of the human rights, namely a set of rights inherent in the nature and existence of man as a creature of God Almighty and is His gift which must be respected, upheld and protected by the state, law and government, and everyone for the sake of honor and protection of human dignity⁸. In the context of human rights, health is the right of every person with the state obliged to respect, uphold and protect the rights of every person.⁹

Providing information regarding the implementation of the Social Security program to Participants and the public. Massive socialization to the community provides an understanding of the importance of the *BPJS* program. In addition, various information about the flow of health services, the latest regulations regarding *BPJS* programs, and several innovations that have been issued by *BPJS* Health to facilitate the community in obtaining services.¹⁰

Based on the various provisions above, it is clear that the Social Security Agency is an institution mandated by the state to carry out arrangements related to the implementation of health insurance functions for all groups of society. The position between *BPJS* participants and *BPJS* institutions in its development is not only limited to between the community and the *BPJS* institution as a government representative that has a function as a social security provider, in terms of agreements made by *BPJS*

6 Abdur Rahim, Implementasi Pengawasan Bagi Badan Penyelenggara Jaminan Sosial (BPJS) Kesehatan Ditinjau dari Hukum Administrasi Negara, *JIIP: Jurnal Ilmiah Ilmu Pendidikan*, Vol. 6, No. 8, 2023, page.5795-5800

7 Fahrul Ramdan Suwandi, Aspek Hukum Keberlakuan Bpjs Ketenagakerjaan Terhadap Perlindungan Dan Keamanan Kerja, *Sibatik Journal*, Vol. 2 No. 1, 2022, page 251-262

8 Ong Argo Victoria, Thaan Neet Bunprakop, Legal Protection For Doctor And Medical Staff In The Pandemic Period Of COVID-19 (An Overview of Indonesia from International Perspective), *Jurnal Pembahasruan Hukum*, Doktor Hukum Unissula, Vol. 7, No. 1, 2020, see to Ong Argo Victoria & Myska., Doctor's Contributions in Transportation Monitoring During COVID-19 Pandemic, *KnE Social Sciences*, Dubai-Uni Emirates Arab (UEA), Vol. 5, No. 1, 2021, page.598-618.

9 Valen Nainggolan, Jaminan Kesehatan Bagi Rakyat Indonesia Menurut Hukum Kesehatan, *Sibatik Journal*, Vol. 1, No. 6, 2022, page 907-916

10 Sri Purwanti, Sosialisasi Pemanfaatan Layanan Digital Badan Penyelenggara Jaminan Sosial Kesehatan Di Puskesmas Banjarmasin Indah, *Abdi Curio: Jurnal Pengabdian Masyarakat*, Vol. 1, No. 1, 2022, page 24-29

participants and *BPJS* institutions are also attached to the breaths and principles of civil law.¹¹

According to Asen B. Tahupiah, the agreement between *BPJS* participants and *BPJS* institutions in reality is not fully subject to the Civil Code,¹² according to the author, this is not entirely wrong and neither is it entirely wrong, the health insurance agreement is in fact carried out with terms like a civil agreement, especially more nuanced insurance law. The insurance agreement is in principle made based on the terms of the agreement as outlined in Article 1320 of the Civil Code, so that the position between the *BPJS* participants and the *BPJS* institution is also attached to the valid terms of the agreement as stipulated in Article 1320 of the Civil Code.¹³

The position of the health insurance agreement as an agreement attached to the principle of civil agreement can be easily observed in seeing the obligation of participants to pay contributions without arrears in order to receive health insurance to obtain health services from medical service providers. The breath of social security in this case cannot be said to be very strong, considering that social institutions should not be oriented towards paying contributions, but also towards optimizing the fulfillment of the health insurance rights of *BPJS* participants. Based on the reality, the *BPJS* seems passive when there is a problem of *BPJS* rejection by medical service providers, which in this case is the hospital.¹⁴

This hospital rejection of *BPJS* participants was experienced by Reny Wahyuni. Hary Kustanto, Reny's husband, as reported in the daily electronic period merdeka.com, explained that he had tried to find an ICU room for Reny, who at that time was in poor health, in seven hospitals in Bekasi City, including the Regional General Hospital with a *BPJS* Health card. However, his various efforts were in vain because the ICU rooms were all full. Feeling that there was no hope in Bekasi City, Hary decided to bring his wife, who was sick in her womb, to Koja Regional Hospital, North Jakarta without *BPJS*. As a result, the patient there was immediately accepted, and was immediately handled by medical staff.¹⁵

Against Reny's treatment, the *BPJS* does not appear at all as a party responsible for the misfortune experienced by Reny Wahyuni as a *BPJS* participant. This position is clearly contrary to the principle of balance in the medical service financing agreement through social security. The *BPJS* can

11 Rahmat Hidayat Suadu, Hubungan Kontraktual Antara Peserta Dengan Badan Penyelenggara Jaminan Sosial (BPJS) Kesehatan, *Lex et Societatis*, Vol. III, No. 10, 2015, page 98.

12 Asen B. Tahupiah, Perjanjian Antara Peserta Dengan Bpjs Bidang Kesehatan Menurut UU No. 24 of 2011, *Lex Crimen*, Vol. V, No. 3, 2016, page 139.

13 Abdulkadir Muhammad, *Hukum Asuransi Indonesia*, PT. Citra Aditya Bakti, Bandung, 2011, page 65.

14 R. Nurdiah and A. T. Iman, Analisis Penyebab Unclaimed Berkas BPJS Rawat Inap di RSUD Dr. Soekardjo Tasikmalaya, *Manajemen Informasi Kesehatan Indonesia*, Vol. 4, No. 2, 2016, page.23-25.

15 Adi Nugroho, Pakai BPJS, Reny ditolak berobat tujuh rumah sakit di Bekasi, <https://www.merdeka.com/peristiwa/pakai-bpjs-reny-ditolak-berobat-tujuh-rumah-sakit-di-bekasi.html>, accessed on June 22, 2023.

also be said to have made a default against Reny, considering that in the medical service financing agreement through social security, the *BPJS* has a duty, one of which is to "pay benefits and / or finance health services in accordance with the provisions of the Social Security program", as stipulated in Article 10-point f of Law No. 24 of 2011 concerning the Social Security Agency. *BPJS* in Reny's case could not have carried out this mandate, this can be seen by the rejection of seven hospitals in Bekasi against Reny, on the grounds that Reny's medical treatment required cash costs, the attitude of the seven hospitals was in fact due to the issue of *BPJS* arrears against the hospital, so that the hospital suffered losses. This heartbreaking fact is shown by data reported by the Ministry of Health in November 2018, the Ministry of Health data states that *BPJS Kesehatan* still has arrears to hospitals reaching Rp 1.72 trillion.¹⁶ This clearly shows that *BPJS* has also violated the agreement as a party that has the task of managing the Social Security Fund for the benefit of Participants. This situation in civil law can be said to be a default for *BPJS* participants. This also clearly shows that *BPJS* has been negligent in carrying out its responsibilities as a guarantor of the realization of health insurance for all groups of society equally and fairly.¹⁷

Based on Valentina's research entitled "Review of Rejection of *BPJS* Health Patient Claims at Tanjung Pura Hospital" that "There were 123 claim files (2.9%) rejected by *BPJS* Health out of 4,253 claim files submitted by Tanjung Pura Hospital in June 2021. The reason for the rejection of 103 outpatient claim files and 20 inpatient claim files was because all of them did not pass the administrative verification of services."¹⁸ Another research from Triayu entitled "Literature Study: Analysis of the Implementation of the Health *BPJS* Program Policy in Improving the Quality of Health Services in Indonesia," states that "The existence of differences and lack of priority for participants who use *BPJS* Health shows that *BPJS* services have not fulfilled Pancasila in the fifth principle, namely the principle of justice. In this case, the justice in question is equality in providing health services to every patient."¹⁹

Based on the background description above, the purpose of this research is to analyze Position of Health Insurance Agreement and to analyze Liability of the Social Security Agency in the Case of Rejection of *BPJS* Participants by Hospitals in the Perspective of Civil Agreement Law.

16 Mohammad Choirul Anwar., Terungkap! Tunggakan BPJS Kesehatan ke Rumah Sakit Rp 1,72 T, <https://www.cnbcindonesia.com/news/20181211171405-4-45897/terungkap-tunggakan-bpjs-kesehatan-ke-rumah-sakit-rp-172-t>, accessed on May 12, 2023.

17 Supriadi and S. Rosania., Tinjauan Berkas Klaim Tertunda Pasien JKN di Rumah Sakit Hermina Ciputat 2018, *Vokasi Indonesia*, Vol. 7, No. 2, 2019, page.19-26.

18 Valentina, Tinjauan Penolakan Pada Klaim Pasien BPJS Kesehatan di RSUD Tanjung Pura, *Jurnal Ilmiah Perekam Dan Informasi Kesehatan Imelda*, Vol. 7, No. 1, 2022, page.65-72

19 Triayu Nur Afifah, Studi Literatur: Analisis Implementasi Kebijakan Program Bpjs Kesehatan Dalam Meningkatkan Kualitas Pelayanan Kesehatan Di Indonesia, *Jurnal Ilmu Kedokteran Dan Kesehatan Indonesia*, Vol. 2, No. 3, 2022, page.113–121.

B. RESEARCH METHODS

The method used in this study was normative method. Normative legal research in its development is research that uses the study of legal behavior concluded in legislation. The subject of study is law which is conceptualized as norms or rules that apply in society and become a reference for everyone's behavior. So that normative legal research focuses on the inventory of positive law, legal principles and doctrines, legal discovery in cases *in concreto*, legal systematics, the level of synchronization, comparative law and legal history.²⁰

C. RESULTS AND DISCUSSION

1. Position of Health Insurance Agreement

Based on Article 5 paragraph (1) of Law No. 40 of 2004, it is stated that "The Social Security Provider Agency shall be established by Law." In accordance with this provision, Law No. 24 of 2011 on the Social Security Agency was passed and promulgated on 25 November 2011, which in its General Elucidation explains that, the national social security system is a state program aimed at providing certainty of protection and social welfare for all people as mandated in Article 28H paragraph (1), paragraph (2), and paragraph (3), and Article 34 paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

The existence of Law No. 40 of 2004 concerning the National Social Security System, Indonesia has a social security system for all Indonesian people. This implies the necessity for the realization of the objectives of the national social security system through the establishment of an organizing body in the form of a public legal entity based on the principles of mutual cooperation, non-profit, openness, prudence, accountability, portability, compulsory membership, trust funds, and the results of the management of the Social Security Fund are used entirely for program development and for the greatest benefit of participants.

The legal relationship between Participants and *BPJS* in the field of Health is intertwined with the legal relationship of agreement or contract, which according to Article 11 point a of Law No. 24 of 2011, stipulates that, *BPJS* is authorized to collect contribution payments." This provision explains that, what is meant by "collecting" is requesting payment in the event of arrears, congestion, or lack of payment. This has the consequence that participants who have arrears of several months or even several years can be declared in default. The position of default for *BPJS* participants is easy to understand in the implementation of *BJS Kesehatan* so far, but the negligence of the *BPJS* in protecting the rights of *BPJS* health participants related to good and quality medical services has not yet become a concept of default.

The health insurance agreement as an agreement contract should

20 Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, Print. 1, PT. Citra Aditya Bakti, Bandung, 2004, page 52.

contain the terms of the validity of the agreement, the terms of the validity of the civil agreement are regulated in Article 1320 of the Civil Code, which the conditions for the validity of the agreement consist of:

The existence of an Agreement for the Parties Binding Themselves. An agreement is needed for *BPJS* participants to register as *BPJS* health participants, this agreement also includes an agreement to carry out all provisions and obligations as *BPJS* health participants, an agreement to carry out obligations in the implementation of social security also needs to be carried out by the *BPJS* institution itself, for example, willing to manage the finances of *BPJS* health participants carefully, responsibly, and in accordance with the medical service financing needs of *BPJS* health participants. So that in making willingness as a *BPJS* participant and as a social security management party carried out by the *BPJS* institution is carried out in a balanced manner. Related to this, it can be said that the health insurance agreement must be made on the basis of the agreement of the parties based on the principle of balance in the contract.²¹

Capacity of the Parties to Enter into an Agreement. This agreement requirement requires that the health insurance agreement contract must be made by a party who has been reasonable and capable of making decisions. The parties who are considered incapable are minors, those who are placed under pardon, women, in matters stipulated by law, and in general all persons to whom the law has prohibited making certain agreements.²²

The condition of a certain thing is a condition related to the implementation of a performance and related to an object that is promised. The achievement in this case consists of giving something, doing something, and not doing something, while the object promised must be a clear thing.²³ In a health insurance agreement, it can be understood that the achievement made by *BPJS* members is to pay contributions, while the achievement of the *BPJS* institution is to manage the contribution money from members and distribute it for the medical service needs of *BPJS* participants. Meanwhile, the object of the health insurance agreement is human life, body, and health. Based on this requirement, the health insurance agreement can be said to have an object that is clearly agreed with the achievement and object in the form of health insurance that covers the needs of human life, body and health.

The provisions in Article 1320 of the Civil Code do not explain the meaning of *orzaak* (halal causa). Article 1337 of the Civil Code mentions

21 Niru Anita Sinaga and Tiberius Zalucu, Peranan Asas Keseimbangan Dalam Mewujudkan Tujuan Perjanjian, *Jurnal Ilmiah Hukum Dirgantara*, Vol. 8, No. 1, 2017, page.49-50.

22 Danang Wirahutama, Widodo Tresno Novianto, and Noor Saptanti, Kecakapan Hukum Dan Legalitas Tanda Tangan Seorang Terpidana Dalam Menandatangani Akta Otentik, *Masalah - Masalah Hukum*, Vol. 47, No. 2, 2018, page.119.

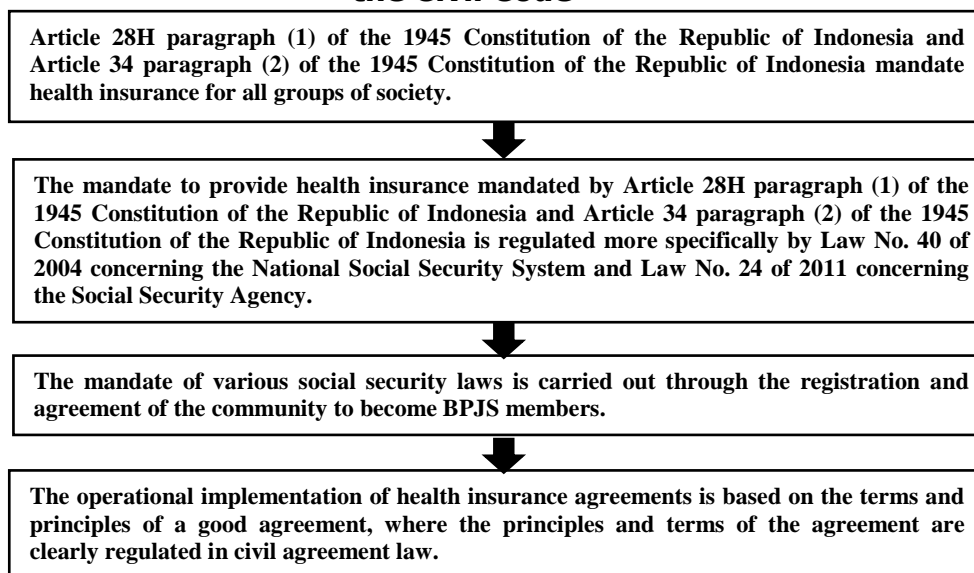
23 Endi Suhad and Ahmad Arif Fadilah, Penyelesaian Ganti Rugi Akibat Wanprestasi Perjanjian Jual Beli Online Dikaitkan Dengan Pasal 19 Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen, *Jurnal Inovasi Penelitian*, Vol. 2, No. 7, 2021, page 1969.

prohibited *causa*. A cause is prohibited if the provisions with the law, decency, and public order. So the agreement made is one that is permitted by law.²⁴ The implementation of the health insurance agreement is in fact based on Law No. 40 of 2004 concerning the National Social Security System and Law No. 24 of 2011 concerning the Social Security Agency.

2. Liability of the Social Security Agency in the Case of Rejection of *BPJS* Participants by Hospitals in the Perspective of Civil Agreement Law

Based on the explanation above, it is clear that the health insurance agreement has two sides, the first side of the health insurance agreement is an administrative mechanism for recruiting *BPJS* members and at the same time the administration of health social security implementation services to realize the mandate of Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia and Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Then on the other hand, the health insurance agreement in its operation related to the bond of rights and obligations between *BPJS* and *BPJS* participants is also an agreement that is shaded by the terms and principles of civil agreement law. The following is a chart of this thought:

Chart: The Position of Health Insurance Agreement in the Perspective of Law No. 40 of 2004 concerning the National Social Security System and Law No. 24 of 2011 on Social Security Agency as well as in the Perspective of Article 1320 of the Civil Code



This view juridically has implications for the position of *BPJS*, which is not only seen as the administration of the implementation of

²⁴ Dyah Ochtorina Susanti, *Notary Responsibility In Checking Halal Causa Requirements On Objects Promised*, *Jurnal Notariil*, Vol. 5, No. 1, 2020, page 25-26.

health social security, but BPJS is also seen as a party bound by civil liability in agreement law. The implementation of health social security in its development has encountered many problems, one of the real problems is the rejection of *BPJS* participants by hospitals where they come to get medical service rights.

The Ombudsman of the Republic of Indonesia received 700 complaints in 2021-2022 related to the National Health Insurance or JKN service. Some of these reports are about refusals related to health service quotas for participants of the Social Security Agency or *BPJS* Health.²⁵ This case of rejection of *BPJS* members by the hospital was experienced by many parties. One of them is Reny Wahyuni who was rejected by seven hospitals in Bekasi.²⁶ In its development, the hospital is prohibited from rejecting patients. This is clearly regulated in the Law No. 36 of 2009 concerning Health.

Article 23 paragraph 4 of Law No. 36 of 2009 Concerning Health states that "while providing health services as referred to in paragraph (1), medical personnel are prohibited from prioritizing interests of material value". Then Article 32 paragraph (2) of Law No. 36 of 2009 Concerning Health states "in an emergency, health care facilities, both public and private, are prohibited from refusing patients and/or asking for an advance payment". These two provisions stipulated in Law No. 36 of 2009 Concerning Health indicate that hospitals as health institutions are prohibited from rejecting *BPJS* members who need medical services.

In addition to hospitals, *BPJS* is also responsible for *BPJS* health participants, the *BPJS* responsibility is to ensure the realization of good and quality medical services for *BPJS* participants through the mechanism of determining hospitals and qualified medical personnel and ensuring that hospitals that become partners have a service system that can serve the medical needs of *BPJS* participants satisfactorily and fairly.²⁷ The absence of *BPJS*'s role and efforts in reprimanding and providing administrative sanctions for hospitals as partners when there is a rejection of *BPJS* participants by hospitals that are *BPJS* partners has shown that *BPJS* has not carried out its duties as a responsible party in ensuring good medical services for its participants. This situation is clearly contrary to points a and b of the preamble of the Law No. 40 of 2004 concerning the National Social Security System which states that:

Everyone has the right to social security to be able to meet the basic needs of a decent life and improve their dignity towards the realization of a prosperous, just and prosperous Indonesian society.

25 Andi M. arief, Masih Ada Peserta BPJS Kesehatan Ditolak RS, Kemenkes Siapkan Sanksi, accessed via <https://katadata.co.id/ameidyonasution/berita/63fdbe3743047/masih-ada-peserta-bpjs-kesehatan-ditolak-rs-kemenkes-siapkan-sanksi>, on May 12, 2023.

26 Adi Nugroho, Pakai BPJS, Reny ditolak berobat tujuh rumah sakit di Bekasi, <https://www.merdeka.com/peristiwa/pakai-bpjs-reny-ditolak-berobat-tujuh-rumah-sakit-di-bekasi.html>, accessed on June 22, 2023.

27 Farida Tuharea, Analisis Tanggungjawab Bpjs Kesehatan Terhadap Klaim Hak-Hak Peserta Bpjs Di Rumah Sakit Umum Daerah Jayapura, *Legal Pluralism*, Vol. 8, No. 2, 2023, page 179.

Social security is a form of social protection to ensure that all people can fulfill their basic needs. The principles of social security include three things, namely the principle of humanity, the principle of benefits, and the principle of justice. These three principles are the foundation of sustainable and relatable principles, meaning that between one principle and another will coexist and cannot stand alone to support the nature of social security.²⁸

In order to provide comprehensive social security, the state develops a National Social Security System for all Indonesians. jaminan sosial tidak hanya berporos pada terwujudnya kesejahteraan masyarakat saja. Namun demikian, jaminan sosial telah bermetamorfosa menjadi sebuah sistem, di mana sistem tersebut dibangun sesuai dengan identitas dan kondisi masing-masing negara. Kesejahteraan seluruh warga negara merupakan tanggung jawab negara, oleh karenanya untuk memastikan hal tersebut negara terus memberikan terobosan melalui modernisasi regulasi-regulasi sesuai dengan kebutuhan dan perkembangan zaman.²⁹

Civilly, the release of *BPJS* responsibility when *BPJS* participants are rejected by *BPJS* partner hospitals is clearly contrary to the principle of good faith and the principle of balance in the health insurance agreement. The principle of good faith in legal language is called *de goedetrow*. The principle of balance is the principle of agreement which requires that the making of an agreement must equally place the rights and obligations of the parties in an equal position. The explanation clearly states that *BPJS* neglect of its participants when there is a rejection by its partner hospitals is an act of default for *BPJS* participants. So it is clear that the neglect of *BPJS* towards its participants in the issue of rejection of *BPJS* participants by *BPJS* partner hospitals is clearly an action that violates the obligations, duties, and responsibilities of *BPJS* towards *BPJS* participants, this is not in accordance with what is promised in the health social security agreement made by *BPJS* with its participants.

D. CONCLUSION

The health insurance agreement in fact has two sides, the first side of the health insurance agreement is an administrative mechanism for recruiting *BPJS* members and at the same time the administration of health social security implementation services. The health insurance agreement in its operation related to the bond of rights and obligations between *BPJS* and *BPJS* participants is also an agreement that is shaded by the terms and principles of civil agreement law. This is the basic logic that sees that *BPJS* also has civil responsibility for *BPJS* participants. *BPJS* neglect of its

28 Naerul Edwin Kiky Aprianto, Kontruksi Sistem Jaminan Sosial dalam Perspektif Ekonomi Islam, *Economica: Jurnal Ekonomi Islam*, Vol. 8, No. 2, 2017, page.237-262

29 Rudiansyah Putra Sinaga, The Urgence of Legal Policy to Fulfill The Constitutional Rights to Employment Social Security for Vulnerable Workers in The National Social Security System, *Jurnal Hukum to-Ra : Hukum Untuk Mengatur Dan Melindungi Masyarakat*, Vol. 7, No. 3, 2021, page.476-494

participants in the issue of rejection of *BPJS* participants by *BPJS* partner hospitals is clearly an action that violates the obligations, duties, and responsibilities of *BPJS* towards *BPJS* participants, this is not in accordance with what is promised in the health social security agreement made by *BPJS* with its participants.

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