

The Right to Self-Determination in Health Services and the Mandated Health Insurance Program for Universal Health Coverage

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The universal human right of healthy living was specifically included in the Universal Declaration of Human Rights. Various laws and regulations in Indonesia therefore guarantee of the right to health, including stipulations defined in Article 28 H paragraph (1) of the Constitution. This provision provided the basis for the regulation of the right to health as shown by Act No. 9 of 1999 on Human Rights and Act No. 36 of 2009 on Health. The right to self-determination was also listed as a basic human right that should be guaranteed in the implementation of these laws. The provision of health services as a basic social right was also established by the government through the National Health Insurance (JKN) program and the Health Insurance Organising Board (BPJS Kesehatan). The JKN program was targeted to cover all Indonesians in January 2019 by the Universal Health Coverage (UHC) program. All Indonesians, without exception, were required to be participants of the JKN program. Any individuals who refused to participate were to be administratively punished based on article 17 of the BPJS law, which stipulates that a non-participatory individual will be denied public service in the future. Currently, the JKN program has not been fully accepted by all communities or employers. The communities' rights to determine their own health service choices caused friction with their obligation to participate in the JKN program. Both were derived from human right matters in that all individuals were entitled to a healthy life, but at the same time were obliged to participate in the mandated JKN healthy living program.

Keywords: The right to self-determination, the right to health care, health insurance obligations, human rights



Introduction

The right to live healthy is a basic need and fundamental human right guaranteed by the 1945 Constitution. Article 28 H verse (1) of this document states that all citizens have the right to live prosperously in the physical and mental state, to live in healthy and safe conditions, and to receive health services. The right to live in the highest degree of health is the government's responsibility. Further, article 34 verse (3) states that a "country is responsible for the decent health facilities and public facilities' provision." This stipulation indicates that the government is required to ensure all citizens receive decent health services. The government is also responsible for ensuring that health facilities can serve a qualified service. Despite this governmental requirement, however, it is also the responsibility of the people to participate in their own healthcare. Health insurance is another element of basic human rights in terms of required healthcare and is needed to fulfil basic healthcare plans for individuals. The National Health Insurance program, or Jaminan Kesehatan Nasional (JKN), is therefore held in Indonesia as one of the government's responsibilities to fulfil the rights of the citizen and to abide by the Constitution's mandate. The JKN is held nationally by using the social insurance principle. The JKN is held by the appointed institution based on law number 24 of 2011 regarding the National Social and Healthcare Security, or BPJS, which is also known as the Health Insurance Organising Board.

The mandatory nature of the JKN is implemented in the hopes that everyone can receive equal benefits by accessing the supplied health services, compliance to which will fulfil the social rights of society. Nevertheless, laws are not always conducted in reality as they have been written. Problems arise in accessing health services due to various reasons, while some individuals would rather opt out of the JKN altogether. The Universal Health Coverage stipulates that owning health insurance is an obligation in achieving basic human rights. All citizens must therefore participate in the National Health Insurance program, which is governed by the Health Insurance Organising Board. Non-participation in the JKN is punishable by law according to article 17 of BPJS Laws, which states that states administrative punishments as a warning letter, fine and/or public service withdrawal. This mandate generates issues regarding the human right of self-determination, meaning an individual's right to choose his or her own form of health insurance. Due to the Universal Health Coverage, however, such a right is denied by the mandatory JKN program which took effect in January 2019.

Methodology

This study used a socio-legal studies approach with a descriptive-analytical specification. Primary and secondary data was collected through field and library studies, and was then qualitatively analysed.

The concept of human rights and self-determination in health services

The human right is a basic or fundamental right of an individual and forms the basis for the other legal rights and responsibilities. Human rights in the field of health services can be

broken down and analysed from the phrase “human right”. This phrase is entomologically formed by two words, “human” meaning a person of society, and “right” meaning correct, real, certain and required. Human rights therefore refer to the fundamental rights of humankind. Soetandyo Wignjosoebroto defines human rights as “the fundamental rights that are approved universally as the rights that stick to every human because of the nature as a human.” Right is “universal” because it is part of someone’s humanity regardless of skin colour, gender, age, background, culture, religion or faith. The words “stick” or “inherent” are used because these rights are owned by all individuals due to their human nature, not as a gift from the power of certain organisation, meaning that rights cannot be stole or withdrawn. Beauchamp states that “the whole point of human rights language is to transcend the limitations of cultural norms and legal structures. Human rights are possessed by being a human person, whether or not the rights are recognised in particular society. Although these rights are often interpreted as legal rights, they should be understood as universally valid moral claims” (Den Exter, 2009).

In the Republic of Indonesia, Law 12 of the year 2005 refers to the Ratification International Covenant on Civil and Political Rights. This law states that “human rights are naturally and universally inherent in human beings and thus should be protected, respected, defended and should not be ignored, reduced or stole by anyone.” Further, verse (1) of article 25 of the Universal Declaration of Human Rights states that health services are one such obligation within the fulfilment of basic human rights.

The 1945 Constitution also states that health is a human right and should be upheld according to the national’s goal, as written in the Preamble. Health is an important aspect in shaping human resources and to improve the tenacity and competitiveness of national development. Efforts to achieve the highest degree of health began with curing diseases and gradually transformed into continual development and optimisation of modern societal healthcare.

Law 36 of the year 2009 defines health as “a healthy condition, both physically, mentally, spiritually and socially, that allows productive living in social and economic environments.” Remembering the importance of health for the nation’s development, health services should be conducted by and for every individual, society and government. In the other words, the health service is a communal responsibility shared between societies, relative stakeholders and governments. The rules about human right in health service are arranged in several verses in the health constitutions, including:

- Article 4, which states that “everyone has the right to health.”
- Article 5, verse (3) which declares that “everyone has the right to independently and responsibly self-determine the health service they need.” The word “everyone” in this laws means all individuals without exception, and that there should not be any discrimination in the provision of health care.
- Article 6, which states that “everyone has the right to a healthy environment”.

Within the concept of human rights, the right to receive decent health services is a constitutional right for every country. This is stipulated in article 28 H verse (1) of the 1945 Constitution’s mandate: “Everyone has the right to live prosperously in body and soul, having a place to live, having a healthy environment and having the right to receive health services.”



This stipulates that health care is a global right for all individuals. Further, verse (1) of article 1 in Law 39 of the year 1999 states that “a set of rights that stick to humans as nature and as God’s gift that should be respected, highly praised and protected by the country, its laws and its citizens for the honour and protection of humankind’s prestige and dignity” (Endang, 2014).

The health service paradigm has changed its orientation to strengthen the medical relationship between doctor and patient and to consider the patient’s human rights fulfilment. Two kinds of human rights exist in the healthcare field, including the right to healthcare and the right to self-determination (Crisdiono, 2007; Don, Puteh, Nasir, Ashaari, & Kawangit, 2016). The right to healthcare is also known as a fundamental social or societal right that is owned by citizens and allows them to get the best and qualified health services, as explained by the Health Constitutions. The right to self-determination is known as the individual’s fundamental right to accept or decline potential healthcare services.

Principally, the right to self-determination means that everyone is guaranteed to determine the most suitable choice of health service for their own body and mind. This is a basic right sourced from the individual’s fundamental right, the right of self-determination, or Right, in the Black’s Law Dictionary 7th ed., means the right that consists of certain meanings, such as natural right, political right, and civil right. The right to determine one’s own life has closer meaning to the concept of individual right, such as the right of private safety related to life, body, health and honour, as well as the right to an individual’s freedom (Hermien, 1984; Ambikai & Ishan, 2016).

According to these explanations, it can be understood that the right to self-determination is an individual’s fundamental right that is guaranteed in constitutional laws. This right should allow individuals to determine their own choice of health service, including personal selection of health insurance.

The concept of social welfare in the Health Insurance Program towards the Universal Health Coverage

According to the Constitution, social welfare has an important and fundamental role in the provision of human rights. The social welfare of individuals refers to the mechanism and assurance of fulfilling required social justice. This means that citizens’ rights can be protected socially, economically and politically. Fulfilment in security and concord are also integral to the survival of Indonesia as a nation (Wing, 2008, Boniface, 2016).

In Indonesia, the chosen system is mix between tax, central and local government budgets, and social and commercial insurance systems. The ratification of Law 40 of the year 2004 regarding the National Social Welfare Insurance System, or Sistem Jaminan Sosial Nasional (SJSN), resulted in the Indonesian financing system functioning towards the social health insurance system (Ali, 2010; Yilmaz, 2017).

Appropriate management of social insurance is required to implement the constitutions' mandate. Article 34, verse (1) of the Constitution states that "The poor and destitute children shall be cared for by the state," while verse (2) states that the "State develops social insurance systems for all people, empowering the weaknesses and incapacities that correspond to humanity's dignity." Finally, verse (3) states that "the State is responsible in serving health service facilities and decent public facilities." These provisions can be interpreted as embodiments of social welfare for society and the subsequent maintenance of social insurance.

Various legal provisions have formed the basis for the management of social insurance, one of which is health insurance. Law 40 of the year 2004 regarding the National Social Insurance System is the main constitutional rules that underlies the JKN. The management of the JKN program and the development of BPJS is the SJSN constitution's mandate. Social insurance is not only for particular group of people, but is rather the right of every citizen whether rich or poor. Article 41, verse (1) of Law 39 of the year 1999 states that "every citizen has the right to social insurance that is needed for having decent life and for personal development." The "right of social insurance" here means that every citizen should receive social insurance and subsequent health insurance according to the constitution's and the country's capabilities. Finally, article 41, verse (1) of the Constitution states that every Indonesian citizen has the right to social insurance, one of it is in the health field that everyone has the right to get a qualified health service.

As explained in the above, one of the problems in embodying social welfare is financing appropriate healthcare, dictating that health insurance is therefore held by the government. In the historical record of health insurance in Indonesia, the government has been attempting to hold various programs on health insurance by financing schemes such as Jamkesmas, Jampersal, Jamsostek, Askes and other financial models. In managing the JKN, government ratification of Law 24 from the year 2011 about BPJS followed up Law 40 years of 2004 regarding the National Social Insurance System (SJSN). This law appointed BPJS as the management board for JKN.

The National Health Insurance program, or Jaminan Kesehatan Nasional (JKN), in Indonesia is held by the social health insurance mechanism that is mandatory for all Indonesians so that everyone can be protected by insurance. This can then fulfil the basic human rights to healthcare through mandated access to supplied medical services, and can subsequently achieve social welfare for all citizens.

According to Law 2 of the year 1992, social health insurance is defined as a "mandatory social insurance program according to the law that aims to protect the social welfare." While according to the Constitutions of SJSN, article 1, number 3 states that "Social insurance is a mandatory financial collecting mechanism to provide protection from economic and social risks of the participant and/or the participant's family".

As mentioned above, the National Health Insurance is conducted by a social insurance principal. The health insurance is an assurance of health protection to ensure individuals

receive sufficient benefits to fulfil basic healthcare needs as paid by the people or by the government. The principles of social insurance are as follows:

1. Membership is mandatory, so all citizens, whether of low or high risk, healthy or sick, rich or poor, receive social risk protection.
2. The minimum need, meaning every individual is responsible on his or her own economic insurance. Government donations should only be in amounts that cover basic needs, as social insurance employs a minimum need principle.
3. Social agency, meaning that paid insurance provides a certain standard of living for the individual. The amount of contribution should not always relate to the received donation. The adequacy principle is used in this concept, dictating that wealthy assist the poor and younger assist elder. The main aim of this concept is to distribute basic help to everyone without exception.
4. According to the constitutions, the context of program and the amount of the donation is written in a set of laws that are flexible and responsive to society's basic needs.
5. BPJS is an organisation formed under the supervision of central and local government as the state's organisers. The BPJS is not a commercial profit-oriented institution (Mukti, and Moertjahjo, 1999).

The JKN is specifically organised by Presidential Regulation number 12 of the year 2013 regarding health insurance. Article 1, number 1 states that, "The health insurance is assurance of health protection so participants get benefits to fulfil basic healthcare needs that people or government have paid for."

Article 2, number 12 in the 2013 Presidential Regulation sanctioned the participants of the health insurance as a) the Donation Receiver (PBI) of Health Insurance, and b) as non-PBI of Health Insurance. Next in article 3 is mentioned that PBI of Health Insurance refers to low income citizens and people with disabilities, whose contributions are subsidised by the government. Non-PBI is stated in Article 4, verse (1) as "the non-PBI Health Insurance mentioned in the article 2 alphabet b is the participant that is non poor group and non-disability group, consisting of: a) Salary receiver workers and their families, and b) Workers who do not receive salaries and their families, and c) non-workers and their families."

Participation in the National Health Insurance program is a step-by-step process, the first stage of which started on January 1st, 2014. This stage was aimed at less participated people, including PBI Health Insurance; The Ministry of Defence's Armies; civil workers and their families, and PT Askes (Persero)'s participants and their families. The second stage involved people who had not become members of BPJS Kesehatan prior to January 1st, 2019, with the target of Universal Health Coverage. This meant that all citizens were required to become the participants of the health insurance scheme from this date, by which personal healthcare like preventive, curative and rehabilitative services were guaranteed for all individuals.

Universal Health Coverage (UHC) is a health insurance system as the part of government's efforts in providing thorough healthcare to all citizens. In 2014, WHO agreed to The Universal Health Coverage (UHC). In the 58th Geneva Assembly of 2005, the World Health Assembly (WHA) emphasised the importance of health financing systems that ensure public access to health services and subsequent protections for individuals in facing associated

economic challenges. The 58th WHA stated a resolution that sustainable health financing by Universal Health Coverage would be held by the social health insurance mechanism. The World Health Assembly also gave the recommendation for WHO to push membership countries to evaluate the impact of changes to health financing systems in connection with Universal Health Coverage. By the 58th World Health Assembly in 2005 on “Sustainable Financing, Universal Health Coverage and Social Health Insurance,” a new resolution was recommended for membership countries to build sustainable health financing to ensure societies’ healthcare benefits and insurance provisions.

The achievement of UHC is not the sole responsibility of the BPJS, but is rather shared between related stakeholders, including the government (Ministry of Health), health workers in professional organisations, health facilities and partners of BPJS, related parties such as medicine and medical device providers, and lastly, Indonesian society at large. Compulsory membership aims to cover the interests of all these societal levels and allow all members of society to access the benefits of the JKN program. Despite the compulsory nature of membership, implementation is adjusted to the economic capacity of the people, the government and the program’s feasibility. The first wave starts with workers in the formal sector, followed by those in the informal sector as independent members, and finishing with the National Social Security System (SJSN) to be able to cover all members of society at the UHC level.

Provisions of the BPJS Act No. 24 of 2011 confirm that membership is mandatory and specify that implementation is done in stages. Article 14 of the BPJS Law states the definition of “member” as “everyone, including foreigners who work for a minimum period of 6 (six) months in Indonesia, shall be a member of the Social Security program.” This article strongly affirms that the membership of the national health insurance program is mandatory for all Indonesians, including foreigners who have lived in Indonesia for a minimum period of 6 months.

Article 15 describes the obligation for employers to register themselves and their employees, as stipulated in paragraph (1) stipulates: “Employers shall gradually register themselves and their employees as members of the BPJS in accordance with the respective Social Security program.” Paragraph (2) similarly states that the “employer, in registering as referred to in paragraph (1), shall provide the complete and correct data of its organisation and its employees along with their family members to BPJS.” Registrations can be conducted independently, and details of the registration process are not described in this Act but will rather be regulated in a Presidential Regulation.

Other than employers, workers and beneficiaries who are eligible to become the members of JKN, obligations exist for societal members to register themselves and their family members. Article 16, paragraph (1) states that “Every person, other than the employers, workers and beneficiaries who meet the conditions of membership in the Social Security program, must register themselves and their family members to BPJS in accordance with the respective Social Security program.” The article does not specify which family members can be borne by the member, however.

As mentioned previously, any citizens who breach the above regulations are subject to administrative penalties as stipulated in Article 17, paragraph (1). The types of penalties are explained in paragraph (2) as “a written warning, fine, and/or ineligibility for certain public services.” Paragraph (3) states that sanctions in the form of written warnings and fines are executed by the BPJS, while paragraph (4) explains that ineligibility for certain public service is executed by the central or local government. Such public services include the processing of business licenses, building permits and proof of ownership of land.

Based on the above explanations, it can be said that being a member of JKN is a judicial obligation set out by law. The implementing agency is the Health Insurance Organising Board, and it can be concluded that everyone without exception is required to be a member of this organisation. If a person is not signed up for health insurance with the Board, penalties may be imposed on that individual in line with Article 17 of Act No. 24 from the year 2011.

Penalties involving restricted access certain public services are enforced by public service units at government agencies, through the provincial government, or through district or municipal governments. The formulation of these penalties are directly associated with public services, indicating that mandatory membership with the JKN program is in the public’s best interests. These penalties could potentially infringe upon other human rights, however; driving licenses, passports and vehicle registrations are temporary judicial provisions, meaning that such items possess expiry dates and are associated with legitimate authorities for other purposes. In other words, where the documents are not renewed, it will result in the loss of other constitutional rights for the individual.

The principle of balance between rights and responsibilities in the membership of the Health Insurance Program

The right to self-determination in the healthcare system is an individual’s basic right that must be guaranteed and respected. The right to self-determination is enshrined in the United Nations International Convention and Political Rights of 1966, as emphasised in Article 1: “All people have the right of self-determination. By virtue of the right they freely determine their political status and freely pursue their economic, social and cultural development.”

This right has not been fully achieved, however, due to issues surrounding health financing. Such issues contribute to a new paradigm in the healthcare industry, particularly those related to the social security system. National social security is a state program that aims to provide protection and social welfare for all Indonesian citizens. National health insurance is not only a concern of the Indonesian government, but is rather a global matter of importance.

The concept of health insurance in Indonesia is guided by the principle of social insurance, and its implementation is important to understand in terms of social security programs. The ultimate goal of the Indonesian health insurance program, based on the principles of its compulsory membership, is to improve healthcare quality and access in order to achieve the highest degree of health and enable welfare for every member of society.

The implementation of this required social security system still faces some obstacles. Despite increasing public pressure, this remains a politics-laden arena and requires ongoing funding due to the permanency of the program. The government is unlikely to fully finance this venture indefinitely, meaning that funding of the social security system must involve all stakeholders including employers, employees and government agencies. The JKN program therefore consists of two categories: 1) beneficiaries of contribution (PBI) and independent participants (non-PBI). To make national health insurance a reality, 2019 is set as the target year to meet the Universal Health Coverage goal.

Within the scope of human rights, there is an indication of conflict between right and obligation, though both discourses are equally important and must be guaranteed protection. In the concept of basic rights in health services, the right to self-determination must be respected. Appropriate fulfilment of this right includes individual choice of doctor, hospital or health care facility and type of service. Constitutional obligations to the health insurance program deny these rights of choice, however, pointing to the need for compromise or alignment between the right to self-determination and the mandatory membership with JKN. Such alignment may be possible through implementation of the following principles: the principle of mutual cooperation; nonprofit principles; principles of openness, prudence, accountability, efficiency, and effectiveness; the principle of mandatory participation; trust funds, and management of the Social Security Fund. Through these guiding principles, the implementation of JKN is expected to realise the welfare of society.

The principle of mandatory membership is intended to achieve mutual cooperation by following the concept that the strong help the vulnerable, the rich help the poor, and the healthy help the sick. This logical reasoning is stated by Ghufron and Moertjahjo in that if participation is not compulsory, it is anticipated that the members are likely those of high-risk, unhealthy or low income groups. Consequently, costs will be high, and the program may be difficult to implement. With larger and broader participation, risks can be overcome so that the addition of uncertain reserves can be reduced. However, exorbitant membership numbers may sacrifice other important values, such as transparency, participation and public service approaches. Membership capacity may therefore be adjusted to meet the capabilities of the Health Insurance Organising Board. Mandatory membership can then be pursued while also ensuring the best quality of services provided to members.

Alignment and cooperation between these aspects can thereby enable citizens to become members of the JKN program while simultaneously allowing for freedom of choice from other health insurance providers. The option of offering other such providers can benefit citizens and the Health Insurance Organising Board in equal measure, and ensures the basic human rights to healthcare and self-determination are upheld.

Conclusion and policy recommendations

Basic health rights can be seen in two perspectives, first as an individual and basic social and human right which includes the right to self-determine one's own preferred health services. Secondly, basic health should be provided to all members of society regardless of personal or



extenuating circumstances. In order to reach this goal of national health coverage, Indonesia has established a mandatory membership protocol to National Health Insurance as organised by the Health Insurance Organising Board, full implementation of which is set for the end of January 2019. This obligatory program is one policy instrument for the realisation of the basic human right to health care, along with government policies to develop social securities that can develop and distribute this health insurance.

The right to self-determination in health services is an important component of basic human rights and must therefore be upheld and respected. From the perspective of human rights, the right to health care is also called a basic social right, meaning the right of a person as a member of society to receive the best quality health service possible. The right to self-determination is also called the individual's basic right, referring to the right protected by law to approve or disapprove of what is allowed within the health sphere.

The National Health Insurance Program (JKN) in Indonesia is implemented in order to realise the right to healthcare for all citizens. According to the concept of social welfare, the JKN program will lead to comprehensive and equal welfare for the whole community. Welfare is not primarily intended for the individual, but is rather targeted to the wider community. Every person without exception is entitled to fulfill his or her basic rights as a human being, especially the right to live in physical and spiritual prosperity, as mandated in the Constitution. Through the JKN program, Indonesia, therefore aims to achieve social welfare within the health industry, with the ultimate goal of widespread services via the Universal Health Coverage (UHC) scheme. To achieve this end, all citizens are required to become JKN members by January 2019.

The above analysis demonstrates that problems pertaining to human rights in healthcare often occur, especially within the contrasting ideals of individual basic rights and social basic rights. The findings of this study suggest that the public are constrained by two competing demands: first, the issue to determine which health insurance institutions best suits an individual's health needs and financing capabilities, and second, the obligation to participate in the JKN program as a constitutional mandate for all citizens. Failure to comply with this stipulation results in administrative sanctions based on the outlined legal provisions, which in themselves hold consequences pertaining to the loss of social rights through the denial of public services. This study recommends a principle of balance between the right of self-determination and the obligatory health insurance program membership. Such balance could see every citizen becoming a member of JKN, but still being allowed the flexibility and freedom to participate in additional insurance programs or to change providers according to their own unique needs and capacities.



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