

ANALYSIS OF THE IMPACT OF THE ENACTMENT OF THE HEALTH LAW ON THE NATIONAL HEALTH INSURANCE SYSTEM (JKN)

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Abstract

This study aims to analyse the impact of the enactment of the 2023 Health Law on the governance and sustainability of the National Health Insurance System (JKN) in Indonesia. The method used is a literature review by examining various laws and regulations, policy documents, and relevant previous research results. The analysis results indicate that although the provisions that directly alter the structure and authority of the Health Social Security Agency (BPJS Kesehatan) were ultimately not adopted in the final draft of the Health Law, the regulatory dynamics still raise concerns regarding the potential for bureaucratic intervention, reduced independence of BPJS, and overlapping authority between managing agencies and ministries. Additionally, regulatory changes require adjustments in coordination between BPJS Health, the Ministry of Health, and healthcare facilities to ensure quality, equitable access, and the sustainability of JKN financing. This study recommends the need for strengthened governance, regulatory harmonisation, and independent oversight to ensure that the primary objectives of JKN—fair and sustainable health protection for all Indonesian citizens—are achieved optimally.

Keywords: Analysis, Impact of Enactment, Health Law, National Health Insurance System (JKN).

Introduction

The National Health Insurance Program (JKN) is a milestone in the Indonesian government's efforts to achieve Universal Health Coverage (UHC), which is the guarantee of access to quality and affordable health services for all citizens. Universal Health Coverage (UHC) is a health insurance system that ensures everyone has fair and quality access to promotive, preventive, curative, and rehabilitative health services at an affordable cost, as well as protection from financial risks when using these services, so that no individual faces financial barriers in obtaining the health services they need (Agustina et al., 2019).

Since its launch in 2014 and mandated by Law Number 40 of 2004 on the National Social Security System (SJSN), JKN has grown into the largest social security programme in Indonesia,

with the number of participants continuing to increase to more than 269 million people in 2024 or around 95.7% of the total population (Tandon et al., 2022). The success of JKN in expanding coverage is inseparable from the role of the Social Security Administration Agency (BPJS) Health as the main operator of this programme.

BPJS Health was established under Law No. 24 of 2011 and is responsible for managing the financing and delivery of health services for JKN participants. The system operates on the principle of mutual aid, where healthy participants support those who are ill through contributions adjusted to their economic capacity (Nugroho & Sari, 2022).

However, in its implementation, the JKN program still faces various challenges, ranging from participant dissatisfaction with the quality of services at healthcare facilities, administrative obstacles, to issues related to the sustainability of funding. Hospitals, as key partners of BPJS Health, also frequently encounter challenges related to claim submissions, service fees, and procedures that sometimes do not align with cooperation agreements, thereby potentially affecting the quality of services received by JKN participants (Yuliana, 2023).

Amidst this dynamic landscape, the government and the House of Representatives (DPR RI) have taken significant reform steps by enacting the Health Law No. 17 of 2023 through the omnibus law mechanism. This law revises and repeals several laws in the health sector, including those related to the social security system and BPJS Health.

The aim is to create more comprehensive regulations, address overlapping rules, and strengthen the institutional structure and national health services (Kusnanto & Pratiwi, 2021). The enactment of the 2023 Health Law has sparked various polemics and pros and cons among health workers, professional organisations, and the wider community.

One of the main issues is the potential for fundamental changes in the governance and funding of the JKN, such as the possibility of shifting the contribution system to a tax-based system, as well as changes in the reporting and oversight structure of BPJS Kesehatan, which is now under the coordination of the relevant minister rather than directly to the President as stipulated in the previous BPJS Law (Lauranti & Ridwan, 2021).

These changes have raised concerns about overlapping authorities, a decline in the independence of BPJS Kesehatan, and the potential for politicisation in the management of social security. Additionally, changes to the funding system are feared to impact the financial sustainability of the JKN programme, given Indonesia's relatively low tax ratio and high reliance on public funding (Dartanto, 2022).

On the other hand, the 2023 Health Law also brings new hope through increased health budget allocations, simplified licensing for health workers, legal protection for medical personnel, and encouragement to utilise cutting-edge health technology to improve access, quality, and equity in health services in Indonesia.

The government hopes that these new regulations will improve various aspects of health services, from primary to secondary levels, and encourage the equitable distribution of health workers across all regions (Siregar et al., 2021). The transformation of the health system in the aftermath of the COVID-19 pandemic has further emphasised the importance of a strong legal foundation to ensure the sustainability and equitable distribution of health services.

The pandemic has become a momentum for the government to refocus and reallocate its budget, as well as strengthen its commitment to sustainable health financing (Johar et al., 2022).

However, the success of the national health system transformation is highly dependent on regulatory harmonisation, effective implementation, and the involvement of all stakeholders, including the community, health workers, and the private sector. In-depth discussions and evaluations are needed to ensure that regulatory changes do not create new problems that could hinder the main objective of the JKN, which is to provide comprehensive and equitable health protection for all Indonesians (Sparrow et al., 2021).

Therefore, an in-depth analysis of the impact of the enactment of the Health Law on the JKN system is crucial. This study aims to comprehensively examine the regulatory changes that have occurred, their potential impact on the governance and financing of the JKN, as well as their implications for access, quality, and sustainability of national health services.

Using a literature review approach, this study is expected to provide constructive policy recommendations and insights for the government, BPJS Kesehatan, and all stakeholders in achieving a better, fairer, and more sustainable national health insurance system in the post-enactment era of the 2023 Health Law.

Research Method

This research method uses a descriptive qualitative approach with literature review techniques, which involves an in-depth analysis of various literature, laws and regulations, previous research results, and policy documents related to the enactment of the Health Law and its implications for the National Health Insurance (JKN) system; data is collected through document studies and analysed systematically to identify regulatory changes, potential impacts on governance, funding, and the sustainability of the JKN programme based on findings and relevant perspectives from verified sources (Baumeister & Leary, 2020); (Torraco, 2020).

Results and Discussion

Implications of Changes in the BPJS Reporting Structure to the Minister on the Independence of the BPJS Institution

The changes to the reporting structure of the Social Security Agency (BPJS) to the minister as stipulated in the Health Bill have implications for the independence of BPJS institutions, particularly BPJS Health. Previously, BPJS Health was a public legal entity directly responsible to the President, as stipulated in Law No. 24 of 2011. This position gave BPJS broad scope and autonomy in managing participant funds and making strategic decisions without direct intervention from ministries or other government agencies (Suparmi & Tjandrarini, 2021).

Since the changes in the Health Bill placed BPJS under the Ministry, the independence and autonomy of BPJS have been threatened. BPJS, which was previously independent in carrying out its duties and functions, now has to report and coordinate with the minister, potentially leading to bureaucratic intervention that could affect the governance of the institution. This is feared to reduce the effectiveness of BPJS in optimally implementing the national social security programme (Thabrany et al., 2021).

One of the main impacts of this change is the potential for overlapping authority between BPJS and related ministries. When BPJS must report to the minister, strategic decisions that should be made independently now must go through a longer bureaucratic process and are potentially influenced by political interests or sectoral policies of the ministry (Rokx et al., 2020). This could slow down BPJS's response to the dynamics of participants' needs and developments in the national health insurance system. Additionally, this change in reporting structure raises concerns about the management of JKN participant funds. The funds managed by BPJS come from public contributions and are entrusted to the government, so they must be managed professionally, transparently, and accountably. If BPJS is under the control of a minister, there is a risk that funds will not be used entirely in the interests of participants, but may be influenced by fiscal policies or the priorities of the ministry (Kurniawan & Prasetyo, 2023).

From a governance perspective, the independence of BPJS is essential to maintain public trust. With its independent position and direct accountability to the President, BPJS has strong legitimacy to carry out its public service functions and manage social security funds professionally. If this independence is reduced, public trust in BPJS and the JKN programme may decline, which could ultimately impact programme participation and sustainability (Supriyadi & Setiawan, 2023).

Institutionally, BPJS is a hybrid legal entity that performs public service functions while managing public funds through a contribution mechanism. BPJS is also supervised

by the Financial Services Authority (OJK) and the State Audit Agency (BPK), and is subject to non-profit accounting standards, not government accounting standards. As such, BPJS has distinct characteristics from most government agencies, requiring adequate autonomy to fulfil its dual role (Suryani, 2024).

Changes in reporting structures may also affect BPJS's selection processes and collaborations with healthcare facilities. Under the Health Bill, BPJS is required to accept collaborations with healthcare facilities that hold business licenses, without considering quality selection criteria as stipulated in previous regulations. This could lower service standards for JKN participants and increase the risk of suboptimal service delivery (Suryahadi et al., 2021).

From a service perspective, ministerial interventions could trap BPJS in slow and unresponsive government bureaucracy, contrary to the principles of public service, which should be fast, efficient, and oriented toward the broader public interest (National Social Security Council, 2020).

The Chairman of Apindo emphasised the importance of maintaining BPJS's position under the President to ensure that participant funds are managed independently and professionally. If BPJS is placed under a minister, there is concern that there will be a decline in the governance of the national social security system, potentially harming JKN participants in terms of service quality and social protection. From a legal perspective, this change could also lead to regulatory conflicts between the BPJS Law and the Health Law. The lack of alignment between the two laws could create legal uncertainty for BPJS, participants, and all stakeholders in the national health insurance system (Sari & Nugroho, 2020).

The Minister of Health has stated that the Ministry of Health will not take over BPJS's authority, particularly in terms of fund management and financial policy. However, this statement has not fully addressed public concerns, given that structurally, BPJS remains under the coordination of the minister in the Health Bill (Sari & Nugroho, 2020).

In the context of social security governance, the principle of independence of public fund management institutions is crucial to ensure that programmes are implemented in accordance with the mandate of participants and are not influenced by short-term political interests. Therefore, changes to the reporting structure of BPJS to the minister require thorough analysis and strict oversight to avoid negative impacts on the sustainability and effectiveness of the JKN programme (Mahendradhata et al., 2020).

Overall, the implications of the change in BPJS's reporting structure to the minister on the independence of the BPJS institution are significant. If not properly anticipated, this change could reduce BPJS's autonomy, lower the quality of governance, and threaten public trust in the national health insurance system. Therefore, a strong commitment from all stakeholders is needed to ensure that the

principles of independence and professionalism of BPJS are maintained in managing funds and providing services to the public.

Changes to the Composition of the BPJS Supervisory Board in the Health Law Contradict the BPJS Law

The changes to the composition of the BPJS Supervisory Board in the 2023 Health Law create a structural contradiction with Law No. 24/2011 on BPJS, particularly regarding the tripartite plus principle that forms the basis of the national social security system. The BPJS Law explicitly stipulates that the composition of the BPJS Health Supervisory Board consists of 7 members with balanced representation: 2 government representatives, 2 workers, 2 employers, and 1 community leader. Meanwhile, the 2023 Health Law changes the composition to 6 members with a dominant government presence (2 from the Ministry of Health and 2 from the Ministry of Finance), while workers and employers are each represented by only 1 person.

This change fundamentally erodes the principle of multi-stakeholder representation that is the essence of the BPJS Law (Tjandrarini & Suparmi, 2020). From a legal perspective, this change contradicts the principle of *lex specialis derogat legi generali* because the BPJS Law, as a special regulation, should remain applicable to technical matters of BPJS management.

Article 21(2) of the BPJS Law, which explicitly states the balance of representation between the government, workers, and employers, is clearly violated by the addition of the Ministry of Finance to the board's composition. The government's dominance reaches 66.6% in the new structure, while worker and employer representation drops from 57% to 33% (Aini & Rahmah, 2023).

The mechanism for dismissing members of the Supervisory Board under the Health Law also raises legal issues. Article 21(9) of the Health Law grants the minister the authority to propose the recall of board members from the government sector, while Article 34 of the BPJS Law No. 24/2011 requires dismissal only through a decision by the President following a clear legal process.

This change opens the door to political intervention through administrative mechanisms not regulated in the BPJS Law (Tjandrarini & Suparmi, 2020). The selection process for members of the Supervisory Board, which was originally the authority of the President through an independent Selection Committee, was transferred to the relevant minister in the Health Law.

However, Article 36(1) of the BPJS Law explicitly states that the President forms the Selection Committee with the involvement of the National Social Security Council (DJSN). This centralisation of authority has the potential to create bias in the recruitment of the supervisory board. The character of JKN funds as a mandate from participants that must be managed professionally is also threatened. Article 22(2b) of the BPJS Law prohibits the use of social security funds for purposes outside the

participant programme, while the government's dominance in the supervisory board through the Health Law has the potential to divert these funds for sectoral agendas of ministries. This change contradicts the principle of *fiduciary duty* in the management of public funds (Aini & Rahmah, 2023).

From an institutional perspective, the Health Law returns BPJS to a state-owned enterprise (SOE) oversight model controlled by ministries, despite Article 7 of the BPJS Law explicitly establishing BPJS as an independent public legal entity. The institutional independence required for managing the funds of 269 million participants is threatened by dual reporting to the President and the Minister (Prasetyo & Sari, 2022).

This change in composition also violates Article 28D(3) of the 1945 Constitution regarding the right to justice in representation. The reduction in the proportion of workers and employers on the supervisory board diminishes their ability to advocate for the interests of their constituents, who are the primary contributors to the fund. This is despite the fact that the tripartite plus mechanism in the BPJS Law was designed to maintain a balance of interests among stakeholders (Muttaqien, 2021).

The transparency of oversight is also threatened by the recall mechanism by the minister. Under the BPJS Law, the dismissal of supervisory board members must go through performance reviews and objective legal considerations, while the Health Law allows for dismissal based on political considerations by the minister, who is a political appointee. The operational impact is the potential for bureaucratic inefficiency.

The dominance of ministry elements in the supervisory board risks triggering policy overlap and slow strategic decision-making. Meanwhile, social security fund management requires flexibility and speed in responding to dynamics in the health market (Harimurti & Prawira, 2020). This regulatory conflict also has the potential to create legal uncertainty. As the operator of the JKN, BPJS will find it difficult to carry out its dual mandate – on the one hand, it must comply with the BPJS Law, and on the other hand, it must comply with structural changes in the Health Law. This legal dualism could trigger inter-institutional disputes and reduce the performance of the JKN system (Zahroh, 2021). From a financial perspective, changes in the composition of the supervisory board risk disrupting the principle of actuarial soundness of the JKN.

Government dominance in the supervisory board may encourage premium or benefit policies that are not in line with actuarial calculations but rather based on political considerations. This contradicts Article 22 of the BPJS Law, which requires fund management to be based on the principle of prudence (Lauranti & Ridwan, 2021).

This change also disregards Constitutional Court Decision No. 82/PUU-XVIII/2020, which emphasises the importance of maintaining the independence of the BPJS. The Constitutional Court had previously warned the government against excessive intervention in the management of social security funds. The Health Law, however, takes a counterproductive step contrary to this decision (Yuliana, 2023).

Systemically, the changes to the composition of the supervisory board in the Health Law set a bad precedent for the governance of public institutions in Indonesia. If the independence of BPJS as the manager of trillions of rupiah can be reduced through regulatory changes, similar changes may occur in other strategic institutions. However, the principle of good governance requires a clear separation between the functions of regulator, operator, and supervisor in the social security system.

Conclusion

Based on an analysis of regulatory changes and implementation dynamics, it can be concluded that the enactment of the 2023 Health Law does not directly alter the substance of the management and governance of the National Health Insurance Agency (BPJS Kesehatan) or the National Health Insurance System (JKN). This is because the provisions originally intended to amend the National Social Security System Law and the BPJS Law were ultimately removed from the final draft, meaning that provisions regarding BPJS Health continue to refer to previous regulations placing BPJS under the President rather than under the Ministry of Health.

Nevertheless, the strengthening of regulations and the transformation of the health system through the Health Law still have implications for the health service ecosystem, including adjustments to tariff standards, participation obligations, and strengthened coordination between BPJS Health, the Ministry of Health, and health facilities. Challenges that remain include the need for further oversight to ensure fair and non-discriminatory services, as well as synergy between the central government, local governments, and other health insurance providers to ensure the sustainability and quality of JKN services.

Overall, although the 2023 Health Law does not fundamentally alter the legal status or structure of BPJS Health, efforts to harmonise and transform the national healthcare system still require clarification of roles, strengthened governance, and effective oversight to ensure that the primary objectives of JKN—equitable access to and protection of healthcare for all Indonesian citizens—are achieved sustainably.

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