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# Implementation Of Constitutional Rights For Bpjs Health Patients At Regional General Hospitals (RSUD) Serang City

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*ABSTRACT*

***Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia mandates that every person has the right to physical and spiritual prosperity, to a place to live, and to a good and healthy environment, as well as the right to health services, and Article 34 paragraph (3) of the 1945 Constitution of the Republic of Indonesia stipulates that the state is responsible for providing adequate health care facilities and public services. However, the reality on the ground shows that there is still discrimination or unequal treatment of patients based on their payment status, namely General Patients and BPJS Health Patients. Where General Patients, who pay directly for health services, often get faster access, a wider choice of doctors, and priority in the use of facilities and medical procedures. Conversely, BPJS Patients often experience longer waiting times, limited facilities, and complicated bureaucratic procedures. The purpose of this study is to analyze the implementation of constitutional rights for BPJS patients at the Serang City Regional General Hospital (RSUD). This study uses a normative legal research method, with data sources obtained from secondary and primary data, which are then analyzed qualitatively.***

***Keywords: Constitutional Rights, Patients, BPJS Health Insurance, Serang City Hospital.***

## I. INTRODUCTION

The right to services, in the Indonesian constitutional system, is part of the constitutional rights of citizens guaranteed in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that every person has the right to physical and spiritual prosperity, to a place to live, and to a good and healthy environment, as well as the right to health services. Furthermore, the state's guarantee of this right is reinforced in the provisions of Article 34 paragraph (3) of the 1945 Constitution, which emphasizes that the state is responsible for providing adequate health care facilities and public service facilities.

Healthcare services, which are part of the constitutional rights of citizens, affirm the state's responsibility to provide adequate healthcare facilities that are free from discrimination for all Indonesian citizens. In practice, this right is realized through the National Health Insurance (JKN) program managed by the Social Security Administration Agency (BPJS) for Health, which allows BPJS participants to access medical services at partner health facilities, including hospitals. However, implementation in the field still leaves various problems, such as discriminatory treatment of BPJS patients, long waiting times, services that do not meet medical needs, and

administrative issues that make it difficult to fulfill patients' rights. This raises important questions about the extent to which the state is present in guaranteeing rights to fair and humane health services in line with the principles of a state based on the rule of law that protects the dignity of its citizens.

The embodiment of human values and social justice that form the basis of the Indonesian state, as stated in the second and fifth principles of The Five Principles (Pancasila) (Asshiddiqie, 2018: 153–154), includes the right to health care. This right is not only a basic individual need, but also part of human dignity that must be guaranteed and protected by the state.

Furthermore, the state has a central role as the provider of public welfare, including in terms of ensuring equal access to health services for all citizens without discrimination. The concept of the welfare state places the government as the main stakeholder responsible for fulfilling the social and economic rights of citizens, including the right to health services, as a form of moral and legal responsibility in the life of the nation and state (Asshiddiqie, 2018:154). Therefore, any form of neglect in fulfilling the right to health services, especially for BPJS participants, is a violation of the basic principles of justice and humanity, which are the main foundations of the constitution and state philosophy.

Equitable and adequate health services are a basic need of the community that has a direct impact on quality of life, social productivity, and distributive justice in society. When access to health services is not equitable, especially for BPJS participants from lower-middle-class economic backgrounds, social inequality will occur, potentially leading to distrust of state institutions. The public perceives that the state's presence is insufficient when basic rights, such as healthcare services, are not provided optimally or are even differentiated based on social security membership status. In a diverse society, the existence of a health insurance system such as BPJS should be able to create a sense of social security and strengthen solidarity among social groups (Adioetomo & Suharti, 2020:41–44). Therefore, the state must ensure that the health services provided by hospitals to BPJS participants are fair, equitable, and do not neglect the principle of social equality in society.

The guarantee of the right to health services has been affirmed in Article 28H paragraph (1) and Article 34 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, and has also been formulated in various laws and regulations as implementing regulations under the 1945 Constitution of the Republic of Indonesia, including being reinforced through Constitution Number 40 of 2004 concerning the National Social Security System (hereinafter referred to as the SJSN Law) and Constitution Number 24 of 2011 concerning the Social Security Administration Agency (hereinafter referred to as the BPJS Law), which explicitly regulates the rights of BPJS participants to obtain quality and non-discriminatory health services. In addition, Law Number 17 of 2023 concerning Health also places the right to health as an integral part of human rights.

The rights of BPJS participants in the context of national health insurance are regulated in Article 5 paragraph (1) of the SJSN Law, which states that every person has the right to obtain social security to meet their basic needs for a decent life. Then Article 19 paragraph (1) of the SJSN Law states that every participant has the right to obtain health insurance benefits in accordance with their medical needs. Furthermore, Article 19 paragraph (2) of the SJSN Law emphasizes that health insurance benefits as referred to in paragraph (1) are organized based on the principle of portability.

Meanwhile, in the BPJS Law, the rights of participants as BPJS patients are regulated in Article 11 letter a of the BPJS Law, which states that participants are entitled to social security benefits in accordance with the program they are enrolled in. Furthermore, Article 15 paragraph (1) of the BPJS Law states that BPJS for Health is obliged to provide complete and accurate information regarding the rights and obligations of participants as well as health insurance service procedures.

The rights of patients in the Health Law can be seen in Article 4 paragraph (1) of the Health Law, which affirms that everyone has the right to obtain safe, quality, and affordable health services. Then, Article 6 paragraph (1) of the Health Law states that everyone has the right to obtain accurate, clear, and honest information regarding health service data and information. Furthermore, Article 7 letter c of the Health Law states that every person has the right to humane, fair, and non-discriminatory treatment in receiving health services. Thus, normatively, the state has a legal obligation to ensure that every BPJS participant, as part of the citizenry, receives health services in accordance with legal standards, medical professionalism, and the principle of non-discriminatory justice.

Based on preliminary research through interviews with Yoga Dwi Setyoko, as the Administrator of the Indonesian Metal Workers Union Federation (FS PMI) Jamkes Watch, health services for BPJS participants who are workers are still far from optimal. For example, when a worker is sick and referred to a regional hospital, patients who are union members are often faced with difficulties such as the unavailability of rooms that match their class, unsuitable prescriptions, long waiting times for outpatient treatment, and so on.Setyoko, 2025) .

Thus, even though various regulations have clearly stipulated patients' rights in the National Health Insurance system, including the state's obligation to provide fair and adequate health services, at the implementation level, there is still a gap between legal norms and reality in the field. The phenomenon of public complaints about discriminatory health services and delays in service for BPJS participants continues to occur, including at the Serang City Regional General Hospital. Thus, there is a gap between regulations that guarantee patients' constitutional rights and their implementation in hospitals.

According to Yulia Susanti et al., another obstacle faced by BPJS participants is related to the process of claiming health services at hospitals (Susanti, Syofyan, Khairani, & Hermanto, 2024:12188). Delays in submitting claims by hospitals to BPJS can cause delays in payment, which ultimately affects the availability of medicines and medical equipment for patients. This shows that there are challenges in the

administrative mechanism that can affect the quality of health services received by BPJS participants (Taslim & Meliala, 2024:72).

The urgency of this research lies in the importance of evaluating the implementation of the constitutional rights of BPJS participants in healthcare practices in hospitals, particularly in the Serang City Regional General Hospital (RSUD). Although the right to health services is normatively guaranteed through Article 28H paragraph (1) and Article 34 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, and further regulated in the JKN Law, BPJS Law, and Health Law, the reality in the field shows that there are still inequalities in the implementation of health services for BPJS participants. Previous studies or research have mostly discussed aspects of health service management, patient satisfaction, or the effectiveness of the BPJS system in general, but have not specifically examined the constitutional rights of patients as subjects of law guaranteed by the state.

This research is significant because it provides a constitutional perspective on human rights in assessing the responsibilities of the state and regional hospitals as providers of public health services. In addition, there have not been many legal studies that have examined in depth how the constitutional rights of BPJS participants are practiced in the context of regions such as the Serang City Regional General Hospital, which has its own social, economic, and institutional characteristics of health services. Thus, this study not only enriches the literature on health law and constitutionalism but also provides a basis for the formulation of public health service policies that are more equitable, accountable, and oriented towards fulfilling the rights of citizens.

The provisions in Article 28H paragraph (1) and Article 34 paragraph (3) of the 1945 Constitution provide a strong legal basis for the protection of patients' rights within the framework of the national social security system, particularly for participants of the Social Security Administration Agency (BPJS) Health, to obtain quality, fair, and non- discriminatory health services in hospitals. However, the facts on the ground show that there are still various obstacles that prevent these rights from being optimally fulfilled, both in terms of medical services, administrative procedures, and aspects of transparency and accountability of services. Therefore, it is necessary to conduct an in-depth analysis of the extent to which the constitutional rights of BPJS patients have been realized in the practice of health services in hospitals, particularly in the Serang City Regional General Hospital.

Based on the above description, it can be said that the fulfillment of the constitutional rights of BPJS patients in health services is not only an administrative or technical service issue, but also concerns the state's responsibility to guarantee the protection of the basic rights of citizens. The discrepancy between normative provisions and the reality of healthcare services in the field shows the importance of this study to examine in depth how the state, through hospitals as public healthcare providers, fulfills its constitutional mandate in the health sector. With a focus on the Serang City Regional General Hospital, it is hoped that this study can contribute to identifying the problems that occur and offer relevant and applicable solutions to

strengthen the guarantee of the rights of BPJS participants within the framework of a just legal state.

Based on the background of the problem, the issues to be discussed are as follows: How is the constitutional right of patients covered by the Social Security Administration Agency (BPJS) Health implemented at the Serang City Regional General Hospital (RSUD)?

## II. RESEARCH METHOD

This type of research is normative legal research, aimed at obtaining an overview of the implementation of the constitutional rights of Social Security Administration Agency (BPJS) patients in relation to health services at the Serang Regional General Hospital. This normative legal research also uses field research with primary data as support. The data used in this study is sourced from secondary and primary data. Secondary data is data sourced from legislation, jurisprudence, and legal literature or other written legal materials. Meanwhile, primary data is data obtained directly from the research subjects using data collection tools directly on the subjects as the source of the information sought. The primary data was obtained from the Serang City Regional General Hospital (RSUD). The data collection technique in this study was carried out through documentation studies and interviews. Interviews were conducted with Dr. Mu'ammar, M.H., as Director of the Serang City Regional General Hospital (RSUD).

## III. RESULTS AND DISCUSSION

### Implementation of Constitutional Rights for Patients of the Social Security Administration Agency (BPJS) Health at the Serang City Regional General Hospital (RSUD)

Constitutional rights refer to fundamental rights that are directly guaranteed by the country's constitution, namely the 1945 Constitution of the Republic of Indonesia. These rights are fundamental, inherent to every citizen from birth, and cannot be reduced or set aside by lower laws and regulations (Asshiddiqie, 2021:32–34). Constitutional rights include civil, political, economic, social, and cultural rights that must be protected and fulfilled by the state. In the context of constitutional law, constitutional rights not only reflect normative recognition but also demand concrete realization through public policies and services (Arinanto, 2023:59–61).

One important form of constitutional rights is the right to health, which is explicitly stated in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment, as well as the right to obtain health services. Furthermore, Article 34 paragraph (3) of the 1945 Constitution of the Republic of Indonesia emphasizes that the state is responsible for providing adequate health care facilities and public service facilities.

The provisions in the constitution can be said to emphasize that the state has a constitutional obligation to ensure that every citizen has access to health services that

are fair, of high quality, and non-discriminatory. Furthermore, Law Number 40 of 2004 concerning the National Social Security System, which is reinforced by Presidential Regulation Number 82 of 2018 concerning Health Insurance, stipulates that BPJS participants have the right to equal health services, without discrimination, and to obtain accurate information about their rights as participants in the National Health Insurance (JKN) program.

The implementation of the above provisions is realized, among other things, through the national social security system organized by the Social Security Administration Agency (BPJS) Health, which was established based on Law Number 24 of 2011 concerning the Social Security Administration Agency, and is tasked with organizing the National Health Insurance (JKN) program as a form of social protection for all citizens. Thus, every citizen who is a BPJS participant is directly recognized as a legal subject with constitutional rights to health services, including in terms of accessibility, affordability, and quality of service.

The right to health services is also recognized as part of human rights in various international instruments, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Indonesia ratified in Law Number 11 of 2005 concerning the Ratification of the International Covenant on Economic, Social and Cultural Rights. This recognition confirms that the state has an obligation to fulfill, protect, and respect the right to health of every citizen, regardless of their economic status or type of health insurance (Wiratraman, 2015:75-87).

Thus, it can be said that BPJS patients who undergo treatment or examination at health facilities, including the Serang City Regional General Hospital (RSUD), are citizens who are legally entitled to health services in accordance with predetermined standards. The state's obligation—in this case carried out by government-owned hospitals—is to ensure that the services provided to BPJS patients are not discriminatory compared to general patients or private insurance. BPJS patients are entitled to timely, quality, and humane medical services without unnecessary administrative barriers.

The Serang City Regional General Hospital, as a government-owned hospital under the Serang City Regional Government, has the obligation to provide healthcare services to the public, including BPJS participants. Serang City Hospital has become an accredited advanced referral hospital and accepts referral patients from various First Level Health Facilities (FKTP). This shows that Serang City Hospital is in an important position in guaranteeing citizens' access to and implementation of their constitutional rights to health services.

Based on an interview with Mu'ammar, Director of Serang City Regional General Hospital, it was revealed that the main principles in serving BPJS patients are equal treatment and commitment to national regulations. Furthermore, it was stated that Serang City Hospital follows national regulations regarding JKN or BPJS patient services. This means that every patient who comes with BPJS participant status is still served in accordance with the applicable procedures and provisions (Mu'ammar, 2025).

Furthermore, Mu'ammar said that 98% (ninety-eight percent) of patients treated at the Serang City Regional General Hospital are BPJS participants, and the hospital has made efforts to fulfill its obligations in meeting the rights of BPJS participants as part of the citizens protected by the constitution. However, its implementation still faces a number of technical

and structural challenges (Mu'ammar, Implementation of Fulfilling the Rights of BPJS Participants, 2025). Hospitals, as FKRTLs, face a number of structural and procedural obstacles in their implementation. One of the main problems is the tiered referral system that requires BPJS patients to first obtain services at First Level Health Facilities (FKTP), such as community health centers (Puskesmas), primary clinics, or private practitioners, before being referred to a hospital. Without an official referral, hospitals cannot accept BPJS patients, except in emergencies or certain chronic cases. This provision aims to ensure the efficiency and effectiveness of services and control BPJS financing costs (Mu'ammar, 2025).

However, implementation in the field often does not align with these ideal provisions. One of the main problems that often occurs in hospitals, such as at the Serang City Hospital, is the large number of BPJS patients who come directly to the hospital without going through the referral procedure from FKTP. This usually occurs for several reasons, including public ignorance of the tiered referral system, the absence of clinics or private practitioners in their neighborhood, and the limited operating hours of community health centers, which are not open 24 hours a day. In many cases, BPJS patients who come directly to the hospital with minor or non-urgent complaints cannot be immediately served as BPJS participants. Hospitals, in this case, are bound by the BPJS system and policies that do not allow claims for service costs without a valid referral letter from FKTP. Even if patients still want to be treated, their status must be changed to general patients who pay privately, or they will be referred back to FKTP to obtain an official referral.

This situation has two sides. *First*, from the patients' perspective, they feel disadvantaged because they cannot receive immediate treatment, even though they are registered as BPJS participants and regularly pay their premiums. *Second,* from the hospital's perspective, there is a dilemma between the desire to serve patients well and the administrative obligation to comply with BPJS claim requirements. If hospitals insist on accepting BPJS patients without an official referral, the consequence is that they cannot claim service fees from BPJS, which will result in financial losses and additional operational burdens.

Moreover, several regions in Indonesia, especially in suburban or rural areas, do not have easy access to FKTP. Even if there is a community health center, doctors are not always on standby, especially at night. Not to mention if the distance to the community health center is quite far and transportation is limited, it will be very difficult for patients to follow the ideal referral procedure as stipulated. In such circumstances, when patients visit hospitals without a referral due to limited access to primary health care facilities, they are often turned away or asked to return home, thereby preventing them from accessing health services directly.

People who are participants in the BPJS Health program have the status of legal subjects who have fulfilled their constitutional obligations, namely by regularly paying contributions as a condition of participation in the National Health Insurance (JKN) program. The payment of these contributions is not only a form of participation in the social security system, but also a legal basis for participants' claims to adequate health services. Therefore, the state, through government-owned

public hospitals and other health facilities, has a constitutional obligation to ensure that active participants receive comprehensive, prompt, and non-discriminatory health services.

However, the facts on the ground show a gap between the fulfillment of participants' obligations and the realization of their rights. Many BPJS participants who have paid their premiums regularly encounter obstacles when seeking services at hospitals. This is mainly due to the implementation of a tiered referral system that has not been socialized evenly and effectively, as well as the limitations of First Level Health Facilities (FKTP), especially in rural areas. In some areas, FKTP such as community health centers (puskesmas) do not operate 24 hours a day, or even if they are open, there are not always doctors on duty. In addition, not all areas have primary clinics or independent doctors as alternatives. This condition makes it difficult for people to obtain valid referrals, even though they are in need of further medical services.

When patients in such conditions go directly to referral hospitals such as regional general hospitals (RSUD), they cannot be served as BPJS participants because they do not have a referral letter from FKTP. Even though the illness they are suffering from may not be classified as an emergency, they still experience administrative barriers that hinder their right to health services. Hospitals are also unable to claim the costs of these emergency services from BPJS, and ultimately, participants are directed to pay out of pocket as general patients or return to FKTPs with limited access. This situation demonstrates that the implementation of the BPJS system has not been responsive to the geographical realities and availability of primary services in many areas, thereby disadvantaging participants despite their compliant payment of premiums.

This condition has direct implications for the constitutional rights of citizens. Article 28H paragraph (1) of the 1945 Constitution stipulates that every person has the right to physical and spiritual prosperity, a place to live, and access to health services. When access to health services is limited by procedural and infrastructural constraints, the state is deemed to have failed to fully fulfill its constitutional mandate. The right to health services is not sufficiently guaranteed normatively, but must be realized factually through a service system that is adaptive to the needs and conditions of the community, including the availability of FKTP, ease of access to information, and procedural tolerance in certain conditions.

In addition, the existence of a mandatory and contribution-based BPJS system creates a reciprocal relationship between the state and its citizens. The state has a responsibility to ensure that the rights of participants who have paid contributions are not only recognized but also accessible without disproportionate bureaucratic obstacles. The state's failure to provide health services to active participants can be considered a form of denial of the social contract established through the national social security system. Therefore, it is urgent to improve the service system and simplify procedures so that the constitutional rights of the people can truly be realized.

When linked to the theory of the rule of law, the state, within the framework of the welfare state theory, not only functions as the guardian of public order (rechtstaat), but is also actively responsible for realizing the welfare of all its people (Hadjon, 2015:38– 40). This theory emphasizes that the state must guarantee the fulfillment of its citizens' socio-economic rights, including the right to adequate, affordable, and non- discriminatory health services. The principle of the welfare state demands that the law not only be an instrument of state power, but also an instrument for achieving social justice, including the protection of the constitutional rights of BPJS participants as citizens (Asshiddiqie, 2022:61-63). Therefore, quality and equal health services in hospitals for BPJS participants are a concrete manifestation of the state's responsibility to fulfill these constitutional rights, as outlined in the welfare state framework.

In the perspective of welfare state theory, the state is no longer positioned solely as a guardian of order (as in the classical concept of rechtstaat), but also as an active agent responsible for ensuring the welfare of the people (Asshiddiqie, 2018:153-155). This means that it is not enough for the state to guarantee civil and political rights; it is also obliged to ensure the fulfillment of socioeconomic rights, including the right to adequate health services. In this context, the existence and implementation of the national health insurance system through BPJS for Health is one of the state's important instruments in carrying out its welfare function.

However, the fact that BPJS participants who have paid their premiums regularly still experience obstacles in accessing health services—due to complicated referral procedures or limited FKTP facilities in certain areas—shows a gap between the idealism of the welfare state and its implementation in the field. In fact, the principle of the welfare state demands that public services, including health services, must be nondiscriminatory, affordable, and of high quality, without being constrained by unfair geographical or procedural factors. The state is responsible for ensuring that no citizen, especially those who have fulfilled their obligation to pay premiums, is disadvantaged due to system failures or negligence on the part of health service providers.

Equal health services in hospitals, including regional public hospitals as public service institutions, should be a concrete manifestation of the state's responsibility to fulfill the constitutional rights of its citizens. In this framework, the law not only serves as a tool for regulating administrative procedures, but also as an instrument of social justice. When hospitals refuse BPJS patients simply because of the lack of referrals due to inadequate FKTP, the state indirectly fails to implement the principle of the welfare state. Law enforcement should not ignore the fact that inequality of access and limited health facilities are still a reality in many regions.

Based on the above description, it can be said that the implementation of constitutional rights for BPJS patients at the Serang City Regional General Hospital (RSUD) has not been optimally fulfilled, because there are still systemic and structural obstacles in the tiered referral-based health service mechanism. BPJS participants who have paid their premiums regularly often do not receive medical services at the RSUD because they do not have a referral letter from a First Level

Health Facilities (FKTP), even though access to FKTPs in some areas is still very limited, both in terms of facility availability and the presence of medical personnel. This shows a discrepancy between the administrative procedures that have been established and the actual conditions on the ground.

This situation has resulted in BPJS participants who are entitled to adequate and affordable health services being unable to obtain the services they need, thereby violating the constitutional mandate that guarantees every citizen's right to health services. In other words, a service system that is unresponsive to geographical and socio-economic constraints actually creates injustice in the fulfillment of rights. Therefore, there is a need to reformulate policies and increase the capacity of FKTP so that the principles of justice, equality, and protection of citizens' constitutional rights in the national health insurance system can be realized in practice at the service level, including at the Serang City Hospital.

## IV. CONCLUSION

Based on the discussion outlined above, it can be concluded that the implementation of constitutional rights for BPJS patients at the Serang City Regional General Hospital (RSUD) has not been optimally fulfilled, as there are still systemic and structural obstacles in the tiered referral-based healthcare service mechanism. BPJS participants who have paid their premiums regularly often do not receive medical services at the Serang City Regional General Hospital because they do not have a referral letter from a Primary Health Facility (FKTP), even though access to FKTPs in some areas is still very limited, both in terms of facility availability and the presence of medical personnel. This shows a discrepancy between the established administrative procedures and the actual conditions on the ground. This situation results in BPJS participants who are entitled to quality and affordable healthcare services being unable to access such services as they should, thereby contradicting the constitutional mandate guaranteeing every citizen's right to healthcare.

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