LEGAL ANALYSIS OF REFUSAL OF HEALTH FACILITIES TOWARD BPJS PATIENTS ACCORDING TO DSN-MUI FATWA NO.98 OF 2015 REGARDING GUIDELINES FOR IMPLEMENTING SHARIA HEALTH SECURITY (CASE STUDY OF HEALTH FACILITIES IN MEDAN CITY)

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Abstract: This research aimed to analyze the Law related to the rejection of BPJS Kesehatan (Healthcare and Social Security Agency) patients at health facilities in Medan City. The method used in this research is empirical research or field research and conducting interviews. The approach taken is using a conceptual approach. The research results obtained regarding the rejection of BPJS Health patients at Health Facilities in Medan City Based on DSN-MUI Fatwa NO.98 concerning guidelines for implementing sharia health insurance are caused by incomplete administrative files such as referral letters, insufficient room availability, medical equipment inadequate, and diseases that are not covered in BPJS claims. Health facilities that refuse BPJS patients will be subject to civil, administrative, and criminal sanctions.

Keywords: Decline, Health Facilities, MUI Fatwa


Kata Kunci: Penolakan, Fasilitas Kesehatan, Fatwa MUI
Introduction

Health is one of the things that is very important for humans in living their lives because health is a basic human need. As mandated by the 1945 Constitution of the Republic of Indonesia. In addition, the 1945 Constitution of the Republic of Indonesia also states, "The state is responsible for providing proper health service facilities and public service facilities." To make this happen, the Indonesian Government formed the Social Security Administration Agency (BPJS) to replace PT. Askes (Persero) previously held social security and implemented the Jamkesmas program.

The Social Security Administrative Body, abbreviated as BPJS, is a legal entity formed to administer a social security program divided into two types of programs, namely Health BPJS and Employment BPJS. The main task of the Health Social Security Administering Body is to administer or administer the National Health Insurance (JKN) program for all Indonesian citizens. The health insurance provided by BPJS Kesehatan is in the form of protection in the health sector so that each participant receives benefits from the national health care program in meeting their basic health needs by paying a certain amount of contributions independently or dues paid by the Government. According to William Jr and Heins, following an insurance program to transfer risk is the best. Insurance as a risk-sharing tool can be used to bear risk.

Many people care about their health through disease prevention and management to maintain health. On the other hand, guaranteeing its citizens' health is the state's obligation. Therefore, the health insurance program was created for the Indonesian people to provide health insurance. The implementation of BPJS is based on humanity and social justice and is useful for all people to meet their health needs. However, the program's purpose did not work as it should; BPJS Kesehatan had many cases where several health facility providers refused BPJS Kesehatan participants. Both in the national Law and the DSN-MUI Fatwa NO.98 concerning guidelines for implementing sharia health insurance, it has been regulated that health facilities are prohibited from rejecting participants or patients of BPJS Kesehatan make the refusal. From the results of the mini-research that researchers have done previously, it is known that there are several cases of patient rejection of BPJS Kesehatan due to invalid document verification processes and the completeness of patient funds. This is what causes most cases of file rejection by the verifier. This rejection occurred due to inaccurate coding, the absence of medical support examinations,
and incomplete resumes resulting in rejection which led to delays in the BPJS claim process, and the BPJS cannot be claimed at the hospital that is the intended patient’s health facility. As for the background of this problem, researchers found several cases of patient rejection of BPJS health in several hospitals in Medan City, North Sumatra. The problem in this journal regarding how the legal analysis of the rejection of BPJS patients carried out by existing health facilities in Medan is described through a problem formulation below: What are the factors for refusing BPJS Health patients in Health Facilities? Legal Consequences that occur in health facilities that refuse BPJS Health Patients?

**Literature Review**

Since 1 January 2014, Indonesia has started a national health insurance system, which is intended to provide a special social protection health sector for the entire population of Indonesia. The Social Security Administration Agency (BPJS) implements this system through an organized social security scheme. Social Security Administrator is a legal entity for administering social security programs to ensure everyone can meet the basic needs of a decent life. BPJS is organized based on the principles of humanity, benefits and social justice for all Indonesian people to fulfill the basic needs of a decent life for every Indonesian citizen, which has become a fundamental human right. One of the missions of the Health Social Security Administration Agency (BPJS) is to expand JKN-KIS participation to cover all of Indonesia no later than January 1, 2019, through increasing partnerships with all stakeholders and encouraging community participation, and increasing membership compliance.

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The health insurance provided by BPJS Kesehatan is in the form of protection in the health sector so that each participant receives benefits from the national health care program in meeting their basic health needs by paying a certain amount of contributions independently or dues paid by the Government. According to William Jr and Heins, following an insurance program to transfer risk is the best. Insurance as a risk-sharing tool can be used to bear risk.

The Mission of BPJS Kesehatan is; to 1) Improve the quality of equitable services To participants, health service providers, and other stakeholders through an effective and efficient work system, 2) Expanding JKN-KIS participation to cover all of Indonesia no later than January 1, 2019 through increasing partnerships with all stakeholders and encouraging community participation and increasing membership compliance, 3) Maintain continuity of the JKN-KIS program by optimizing fee collectibility, the payment system for health facilities and financial management in a transparent and accountable manner, 4) Strengthen policies and implementation of the JKN-KIS program through increased inter-agency cooperation.

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partnerships, coordination, and communication with all stakeholders, 5) Strengthening organizational capacity and governance supported by professional human resources, research, planning and evaluation, effective and efficient management of business processes and risk management as well as infrastructure and information technology that are reliable. 12

Methods

The type of research used by the author in writing this journal is qualitative by conducting an inductive analysis 13 of analysis law for BPJS Health participants for refusal to Facility Health, then connecting with the problems raised so that objective, logical, consistent, and systematic conclusions are found following the desired objectives in this study. Regarding the approach used by the author is empirical normative, namely legal research regarding the implementation or becoming application of all normative provisions in real on legal events that occur in certain cases in society. 14

This research was conducted by observing the facts of legal issues and discussing and studying existing books and laws related to the problem to be studied. 15 The data sources used in this journal are divided into two, namely primary data sources, which are data obtained or collected by the author directly from the primary source by conducting interviews with competent parties, 16 and secondary data sources, which are divided into primary legal materials which are legal materials. the contents of which are legal provisions and statutory regulations that are generally binding in nature and are related to this research. 17

The legal provisions and laws and regulations include: the 1945 Constitution of the Republic of Indonesia, 18 Law Number 36 of 2009 concerning Health, Law Number 44 of 2009 concerning Hospitals, Law Number 24 of 2011 concerning Social Security Administrator. Secondary legal material is a legal material that is obtained by means of a literature study of documents that have a relationship with the issues raised. 19

Primary legal materials and secondary legal materials are analyzed by the author using qualitative analysis techniques to provide answers to the formulation of the problem or interpret legal materials in the form of sentences which the author arranges systematically in order to obtain a clear interpretation and pictures following the formulation of the problem to conclude then contains conclusions and suggestions. 20

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19 Musda Asmara and Lilis Sahara, “Problems with Choosing a Mate in Islam for People Who Choose a Mate through Social Media,” Nusantara: Journal Of Law Studies 1, no. 1 (December 16, 2022): 40–49.
The documents in question are books, scientific articles, and journals in the field of Law. Tertiary legal materials, namely legal materials, provide instructions and explanations of primary and secondary legal materials, such as legal dictionaries, Indonesian language dictionaries, the internet, and other related references.22

In this journal, the authors use data collection techniques by conducting library research and field research, namely searching for and gathering the theoretical foundations of the problems studied by reading from various literature books or scientific articles published has a relationship with this legal research.24 Laws and regulations and so on which are then processed systematically. While field study is a technique in collecting data that is done by interviewing competent parties.25

Besides that, the data processing technique used by the author is a descriptive analysis, namely, the author writes by writing describing the problem based on existing data, then an in-depth analysis is carried out by the researcher in order to draw a conclusion which is the closing result of this journal.26 The population limits from the research conducted at health facilities in Medan include the Muhammadiyah Hospital in North Sumatra and the Hajj Hospital in Medan.

28 DSN-MUI Fatwa No. 98 of 2015 concerning Guidelines for Implementing Sharia Health Social Security. (Jakarta: DSN-MUI. 2015) p.8
reasons for rejecting the claim file on outpatient care were because the medical resume was not signed by the DPJP (38.8%), proof of service, including diagnoses and procedures, was not signed by the DPJP (48.6%), and no referral letter from a first-level health facility was attached (12.6%).

The BPJS Health Claim Verification Juknis states that outpatient service verification must complete a medical resume that is filled out in full, both the diagnosis, action, and signature of the DPJP, and attach a referral letter. An incomplete reference letter can be one of the reasons why this claim file is rejected. JKN participants need a referral letter to obtain services at Advanced Level Referral Health Facilities (FKRTL), except in emergencies.

The factors of rejection that occur in BPJS Health patients can occur because of the hospital, such as inadequate availability of rooms and medical equipment, and from the patient himself, such as administrative completeness and referral letters, causing rejection of BPJS Health claims that cannot be used in health facilities that target.

**Legal Consequences for Health Facilities Rejecting BPJS Health Patients**

The hospital is an institution in the chain of the National Health System that develops health service tasks for the entire community and also provides and provides short-term and long-term medical services consisting of observation, diagnostic, and rehabilitative actions for people who are sick, injured, and for those who gave birth. According to WHO ([World Health Organization](https://www.who.int)), a hospital is an integral part of a social and health organization with the function of providing complete (comprehensive) services, curative (curative) and disease prevention (preventive) to the community; the hospital is also a training center for medical staff health.

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31 Interview with Mrs. Mila, BPJS Staff at RSU Hajj Medan, 2023.

Based on Article (1) Chapter I of Law Number 44 of 2009 concerning Hospitals, what a hospital means is: A health service institution that organizes complete individual health services that provide inpatient, outpatient, and emergency services.

The legal consequences if you refuse a patient can be subject to sanctions, and because of that, the hospital has violated Law Number 44 of 2009 concerning Hospitals; this action has intersected with carrying out the hospital's obligations as regulated in the Law. Based on the facts of the problem, hospitals that have been proven to have violated laws and regulations can be subject to sanctions following Article 29 paragraph (2) Chapter VIII of Law Number 44 of 2009 concerning Hospitals, which reads: Violation of the obligations referred to in paragraph (1) subject to administrative sanctions, as shown in the table below this,

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<th>No</th>
<th>Type Penalty</th>
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<tr>
<td>1</td>
<td>Reprimand oral</td>
<td>Penalty Light</td>
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<tr>
<td>2</td>
<td>Written reprimand</td>
<td>Penalty Current</td>
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<td>3</td>
<td>Fines and revocation of hospital permits</td>
<td>Penalty Heavy</td>
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Table 1. Penalty Administration offense Hospital

Sanctions for hospitals proven to have refused patients are also contained in Article 190, paragraph (1) and (2) Chapter XX of Law Number 36 of 2009 concerning Health, which reads:

a) Leaders of health service facilities and health workers who practice or work at health service facilities who deliberately do not provide first aid to patients who are in an emergency, as referred to in Article 32 paragraph (2) or Article 85 paragraph (2) shall be punished with maximum imprisonment of 2 (two) years and a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah).

b) In the event that the act referred to in paragraph (1) results in disability or death, the head of the health service facility and/or health worker shall be punished with imprisonment for a maximum of 10 (ten) years and a fine of up to Rp. 1,000,000,000.00 (one billion rupiah).

It is very clear in the laws and regulations that there is a prohibition on refusal of patients in emergency conditions or BPJS patients, sanctions will be applied, it is hoped that all hospitals in Indonesia will comply and carry out what is mandated in the Law.

Apart from that, it is also regulated in the Health Social Security Administrative Agency Regulation Number 7 of 2016 concerning the Fraud Prevention System in the Implementation of the Health Insurance Program Article 24 paragraph (1), it states that in the event that fraud is proven based on the report on the results of the investigation as referred to in article 21 letter e, BPJS Health can terminate the cooperation agreement with privately owned FKTP and FKRTL. Civil sanctions also apply to hospitals that refuse BPJS patients to receive health services, namely the provision of compensation to patients who experience losses due to the refusal.

**Legal Analysis of BPJS Patient Refusal**

According to Dsn-Mui Fatwa No.98 of 2015 Concerning Guidelines for Implementing Sharia Health Insurance

In BPJS Kesehatan, the insurer and the insured are fellow participants, so in this situation, the insurer and the insured have a mutual obligation to each other. Therefore, when there is a refusal by the hospital to provide health services, it is equivalent to a breach of the obligations of the hospital as a participating party in BPJS Kesehatan.

In the event of a refusal by the hospital, BPJS Kesehatan as the insurer has the right to terminate the cooperation agreement with the hospital that refuses to provide health services. In addition, the insurer can also apply civil sanctions to the hospital, namely the provision of compensation to patients who experience losses due to the refusal.
case, what happens is a tabarru’ contract (grant/help) following DSN Fatwa No.98/DSN-MUI/XII/2015 Concerning Guidelines for Health Insurance Providers National Sharia. However, the thing that is not following the grant itself in BPJS is the unclear selection by the participant to choose to use the tabarru’ contract or a grant whose funds are entirely for the benefit of other participants, without expecting the grant's assets to return or it is intended for the participant's personal interests, namely in the contract tabarru’ (grants), participants give grants that will be used to help other participants affected by the disaster.  

While the company acts as a grant fund manager and if the guarantor and the insured are BPJS and participants, then this violates the principles of BPJS Kesehatan, namely mutual cooperation and also BPJS Kesehatan promises uncertain things (health services) to people who are not necessarily going to sick or not (gharar). As explained in the hadith of Bukhari and Muslim: "Every practice only depends on the intention. And someone will be rewarded according to what he intended. (Narrated by Bukhari & Muslim from Umar bin Khattab)"  

Based on this, the authors conclude that BPJS Health has been applied in several health facilities, as explained in the DSN Fatwa No.98/DSN-MUI/XII/2015 Concerning Guidelines for Implementing Sharia National Health Insurance explaining that health facilities (faskes) are prohibited from rejecting BPJS patients as stated in the fifth point in the fourth section regarding contributions and services, in the fifth point which forms the basis for legal analysis in this journal it says that health facilities (faskes) are required to provide health services to individual participants in accordance with sharia principles and values and statutory regulations. The regulations that apply are obligatory to help patients and are prohibited from refusing or allowing it.

In fact, in the field, the researchers found that health facilities cooperating with the BPJS, such as the North Sumatra Muhammadiyah General Hospital and the Hajj Hospital, have implemented DSN fatwa points No.98/DSN-MUI/XII/2015 concerning Guidelines for Implementing Sharia National Health Insurance. However, there are several cases where the hospital refuses due to the absence of a referral letter, room availability, and inadequate medical equipment for patients with chronic illnesses. Participants also obtain their rights because BPJS Health or employer contributions also bear other participants. Therefore, there is a bond of mutual responsibility.  

Based on this, following the provisions of the DSN Fatwa No.98/DSN-MUI/XII/2015 Concerning Guidelines for Implementing Sharia Health Social Security, the authors conclude that the quality of service provided by BPJS Kesehatan is not appropriate, judging from the provisions of contributions and services point four, BPJS


40 Athif. DSN-MUI Fatwa Analysis No: 98/DSN-MUI/XII/2015 concerning Guidelines for Implementing Sharia Health Social Security, 2018., p. 36


42 DSN-MUI Fatwa No. 98 of 2015 concerning Guidelines for Implementing Sharia Health Social Security. (Jakarta: DSN-MUI. 2015) p.8


45 A. Wildan Na’imal Maftuh, “Skema BPJS Kesehatan Perspektif Fatwa DSN-MUI/X/2001 (Pedoman Umum Asuransi Syari’ah),” Maqasid: Jurnal Studi Hukum Islam 4, no. 1
Kesehatan must properly fulfill their obligations to health facilities (Faskes) following the agreement and point five, Health facilities (Faskes) are required to provide health services to individual participants in accordance with sharia principles and applicable laws and regulations; obligated to help patients and prohibited from refusing and/or ignoring it.46

Conclusion
BPJS is a program created by the Government to protect its people which is realized in the form of Health Insurance (JKN), a program of the Health Insurance Administration Agency (BPJS), where every Indonesian citizen is required to become an insurance participant in the health insurance program. Every Indonesian citizen and foreigner who has worked in Indonesia for at least six months is required to become a BPJS member. Every company is required to register its workers as BPJS members. Meanwhile, people or families who do not work for the company must register themselves and their family members with BPJS. The purpose of the BPJS is to make it easier for people to get health and medical services, but this goal is not fully realized. There are many cases of BPJS refusal due to administrative complexity, room availability, and other factors that cause patient refusal to occur. In essence, health facilities are prohibited from refusing BPJS patients to receive civil/administrative sanctions as well as criminal sanctions and revocation of permits to establish health facilities. The Indonesian Ulema Council (MUI) stated in 2015 that BPJS Health was not following sharia provisions. Therefore, in the same year, the MUI Fatwa Commission, along with the Government and the BPJS, scheduled a meeting to discuss related matters, the issuance of the National Sharia Board (DSN)-MUI fatwa Number: 98/DSN-MUI/XII/2015 concerning Guidelines for Implementing Social Security Sharia Health as the foundation or concept of BPJS Health. However, the fatwa has not been appropriately implemented by BPJS Health and the health facilities cooperating with BPJS Health, both from a technical and system perspective.

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46 DSN-MUI Fatwa No. 98 of 2015 concerning Guidelines for Implementing Sharia Health Social Security. (Jakarta: DSN-MUI. 2015) p.8
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