

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

Abstrak: Penelitian ini bertujuan untuk menganalisis hukum terkait terjadinya penolakan pasien BPJS Kesehatan pada Fasilitas Kesehatan yang berada di Kota Medan. Metode yang digunakan dalam penelitian ini yakni metode penelitian empiris atau studi lapangan (field research) dan melakukan wawancara. Adapun pendekatan yang dilakukan dengan menggunakan pendekatan konseptual approach. Hasil penelitian yang didapatkan terkait penolakan pasien BPJS Kesehatan pada Fasilitas Kesehatan di Kota Medan Berdasarkan Fatwa DSN-MUI NO.98 Tentang pedoman penyelenggaraan jaminan kesehatan syariah di sebabkan berkas administrasi yang tidak lengkap seperti surat rujukan, ketersediaan kamar yang tidak cukup, alat-alat medis yang tidak memadai dan penyakit yang tidak dicover dalam klaim BPJS. Terhadap Fasilitas Kesehatan yang melakukan penolakan pasien BPJS akan dikenakan sanksi perdata atau sanksi administrasi serta sanksi pidana.

Kata Kunci : Penolakan, Fasilitas Kesehatan, Fatwa MUI



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Introduction

Health is one of the things that is very important for humans in living their lives because health is a basic human need.¹ As mandated by the 1945 Constitution of the Republic of Indonesia.² 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.³

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.⁴

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.⁵

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.⁶ 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. ⁷This rejection occurred due to inaccurate coding, the absence of medical support examinations,

¹ Solechan Solechan, "Badan Penyelenggara Jaminan Sosial (BPJS) Kesehatan Sebagai Pelayanan Publik," *Administrative Law and Governance Journal* 2, no. 4 (November 13, 2019): 686–696.

² Trisna Widada, Agus Pramusinto, and Lutfan Lazuardi, "Peran Badan Penyelenggara Jaminan Sosial (Bpjs) Kesehatan Dan Implikasinya Terhadap Ketahanan Masyarakat (Studi Di Rsud Hasanuddin Damrah Manna Kabupaten Bengkulu Selatan, Provinsi Bengkulu)," *Jurnal Ketahanan Nasional* 23, no. 2 (August 23, 2017): 199–216.

³ Ika Widiastuti, "Pelayanan Badan Penyelenggara Jaminan Sosial (Bpjs) Kesehatan Di Jawa Barat," *Public Inspiration: Jurnal Administrasi Publik* 2, no. 2 (2017): 91–101.

⁴ Syahriyah Semaun and Juneda Juneda, "Sistem Pengelolaan Badan Penyelenggara Jaminan Sosial (Bpjs) Kesehatan Mandiri Kota

Parepare," *DIKTUM: Jurnal Syariah dan Hukum* 16, no. 2 (December 5, 2018): 284–306.

⁵ Arifin Sihombing, Elinda Lase, and Eliman Ndruru, "Pelayanan Badan Penyelenggara Jaminan Sosial (Bpjs) Kesehatan Di Kantor Cabang Medan Dalam Membuat Kartu Bpjs Kesehatan," *Jurnal Governance OpiniN* 7, no. 1 (April 30, 2022): 83–89.

⁶ Didi Sukardi, "Pengelolaan Dana Badan Penyelenggara Jaminan Sosial (Bpjs) Kesehatan Dalam Perspektif Hukum Islam," *Mahkamah: Jurnal Kajian Hukum Islam* 1, no. 1 (June 13, 2016), accessed March 27, 2023, <https://www.syekhnuurjati.ac.id/jurnal/index.php/mahkamah/article/view/594>.

⁷ Faiz Zainuddin and Imam Syafi'i, "Environmental Jurisprudence; Environmental Preservation Efforts In Islam," *Nusantara: Journal Of Law Studies* 2, no. 1 (March 18, 2023): 23–30.

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.⁸ 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.⁹

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.¹⁰

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.¹¹

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,

⁸ Dwi Astuti Wahyu Nurhayati and Novi Tri Oktavia, "Relevance Of Al Mawardi's Reflection In The Development Of Islamic Economic Activities," *Journal of Nusantara Economy* 1, no. 1 (December 10, 2022): 48–58.

⁹ Mikho Ardinata, "Tanggung Jawab Negara terhadap Jaminan Kesehatan dalam Perspektif Hak Asasi Manusia (HAM)," *Jurnal HAM* 11, no. 2 (August 28, 2020): 319–332.

¹⁰ Sophia Weni Anggriani, "Kualitas Pelayanan Bagi Peserta Bpjs Kesehatan Dan Non Bpjs

Kesehatan," *Jurnal Ilmu Sosial dan Ilmu Politik (JISIP)* 5, no. 2 (August 27, 2016), accessed March 27, 2023, <https://publikasi.unitri.ac.id/index.php/fisip/articel/view/249>.

¹¹ Ary Syahputra Wiguna, "Hubungan Mutu Pelayanan Bpjs Kesehatan Dengan Kepuasan Pasien Bpjs Di Instalasi Rawat Inap Kelas Ii Di Rsu Imelda Medan," *Jurnal Ilmiah Perkam dan Informasi Kesehatan Imelda* 2, no. 1 (2017): 207–218.

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 g reliable.¹²

Methods

The type of research used by the author in writing this journal is qualitative by conducting an inductive analysis¹³ 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 regulations¹⁷ that are generally binding in nature and are related to this research.¹⁸

The legal provisions and laws and regulations include: the 1945 Constitution of the Republic of Indonesia,¹⁹ 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.²⁰

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.²¹

¹² Nilatus Salamah and Miftahur Rahman, "Pandangan Hukum Islam Terhadap Pengelolaan Dana Badan Penyelenggara Jaminan Sosial (BPJS) Kesehatan," *Jurnal Ilmiah Ekonomi Islam* 8, no. 3 (November 30, 2022): 3803–3812.

¹³ Kusdiyana, Samsudin, and Muhammad Wildan Nur Akmal, "Accuracy of Qibla Direction Mosque at Rest Area Toll Road on the Qibla Jurisprudence Perspective," *NUSANTARA: Journal Of Law Studies* 2, no. 1 (March 19, 2023): 31–39.

¹⁴ khairudin Khairudin, "The Practice of Buying and Selling Black Market Goods on The Perspective of Islamic Economic Law," *Nusantara: Journal Of Law Studies* 1, no. 1 (2022): 77–85.

¹⁵ Desy Maryani et al., "A Model of Implementing Restorative Justice Perspective of Trong Yowari Traditional Jurisdiction, Jayapura Regency," *NUSANTARA: Journal Of Law Studies* 2, no. 1 (March 27, 2023): 40–51.

¹⁶ Robi Musthofa Al Ghazali, "Boarding House Rent Refunds During Covid 19 Based On Sharia Economic Law," *Journal of Nusantara Economy* 1,

no. 1 (December 10, 2022): 38–47.

¹⁷ suryaningsih, "Impact of Gadget Addicts on Family Harmony Perspective of Islamic Law," *Nusantara: Journal Of Law Studies* 1, no. 1 (December 16, 2022): 50–64.

¹⁸ Wahyu Ziaulhaq, "Buying and Selling Used Clothing: An Islamic Economy Law Perspective," *Journal of Nusantara Economy* 1, no. 1 (December 10, 2022): 29–37.

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.

²⁰ Meta Riskia, "Implementation Of Mudharabah Financing On Baitul Maal According Majelis Ulama Indonesia," *Journal of Nusantara Economy* 1, no. 1 (December 9, 2022): 1–13.

²¹ Muhamad Imam Muddin, "Inheritance System Mayorat on the Komerung Tribe in Urf Perspective," *Nusantara: Journal Of Law Studies* 1, no. 1 (December 16, 2022): 21–32.

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, namely²³ 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.

Result and Discuss

Factors of BPJS Kesehatan Patient Refusal

The social security administering agency (BPJS) administers social security programs established by public legal entities. BPJS itself consists of BPJS for employment as well as BPJS for health. Health BPJS is a legal entity held or intentionally formed to carry out a health insurance program. BPJS has social security, including health guarantees, old age, work accidents, retirement, and death.²⁷

The DSN-MUI Fatwa NO.98 concerning Guidelines for Implementing Sharia Health Insurance defines BPJS as a legal entity to administer social security programs. Health Social Security Administration is a way of implementing social protection in the health sector to ensure that all people can fulfill their basic needs for a decent life, especially in the health sector.²⁸

BPJS can be enjoyed by all Indonesians who have paid contributions or contributions paid by the Government and also foreigners who have worked in Indonesia for at least six months and have paid contributions. At the BPJS, there are also contributions, but they do not necessarily cover or simply eliminate their social nature because these contributions are still insufficient if they are made to cover health costs if it is really needed.²⁹

BPJS is an alternative for the community to get health and medical services. With the existence of the National Health Insurance

²² Muhammad Kurtubi, "Child Playing Online Game in the Sadd Al-Zari'ah's Perspective," *Nusantara: Journal Of Law Studies* 1, no. 1 (December 14, 2022): 9–20.

²³ Muhammad Fitri Adi, "Hadhonah Rights of Children (Not Mumayyis) Based on Compilation of Islamic Law and Child Protection Act," *NUSANTARA: Journal Of Law Studies* 2, no. 1 (March 15, 2023): 9–22.

²⁴ Yusi Tasika and Giyarsi Giyarsi, "The Effectiveness of the Discussion Method to Increase Students' Understanding and Activeness in Islamic Religious Education Subjects," *Nusantara Education* 1, no. 1 (December 15, 2022): 81–93.

²⁵ Joko Subagyo, *Research Methods in Theory*

and Practice (Jakarta: Gressindo, 1999) p. 45

²⁶ Vincentius Setyawan, "Pancasila As A Philosophical Basis Of Law Formation In Indonesia," *Nusantara: Journal Of Law Studies* 2, no. 1 (March 15, 2023): 1–8.

²⁷ Tiur Rajagukguk and Selamat Siregar, "Analisis Implementasi Kebijakan Bpjs Kesehatan Terhadap Pelayanan Puskesmas (Type Perawatan) Di Kota Medan," *Jurnal Manajemen* 5, no. 2 (November 14, 2019): 205–214.

²⁸ DSN-MUI Fatwa No. 98 of 2015 concerning Guidelines for Implementing Sharia Health Social Security. (Jakarta: DSN-MUI. 2015) p.8

²⁹ Lutfi, "Practice of BPJS Health in the Perspective of Sharia Economic Law," No. Jember District Health BPJS Case Study, 2016. p. 335.

System (JKN), people can seek treatment by making BPJS claims at designated health facilities. However, in reality, there are often rejections of claims that cannot be made at the intended health facility due to several factors that become obstacles to BPJS claims made by patients.³⁰

Based on the results of the interviews that the researchers conducted with the BPJS management staff at the Muhammadiyah Hospital in North Sumatra, Mr. Wahyu said that "BPJS patient rejection can occur due to several factors as follows; Availability of rooms, patient urgency (illnesses experienced), the intended hospital group, inadequate availability of medical devices, diseases that cannot be claimed and covered using BPJS Kesehatan."³¹

Apart from being at the Muhammadiyah Hospital in North Sumatra, the researchers also interviewed Mrs. Mila, the BPJS staff at the Medan Hajj Hospital, by asking what factors caused the patient to be denied their BPJS claim. As for the results of the interview he got, he said that "BPJS patients have never been rejected here, but only the public's perception says they are rejected even though this is because the patient does not have a referral letter from the clinic or puskesmas, then there is no room availability, adequate medical equipment so that the patient does not get health services at this RSU."³²

The study results showed that the number of claim files rejected by BPJS Kesehatan was around 100 (2.7%) of the 3,253 claim files submitted by the North Sumatra Muhammadiyah Hospital and Medan Hajj Hospital in June 2022. The rejected claim files comprised 103 (83.7%) outpatient and 20 inpatient files (16.3%). The reason for the refusal was because there was no availability of rooms and because they did not pass the service administration verification. The

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.³³

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*), 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

³⁰ Astrid Teresa, "Tantangan Badan Penyelenggara Jaminan Sosial Kesehatan (Bpjs) Dalam Rangka Mewujudkan Kesejahteraan Rakyat," *Journal Ilmu Sosial, Politik dan Pemerintahan* 7, no. 1 (2018): 1–12.

³¹ Interview with Wahyu, BPJS Health Staff at Muhammadiyah Hospital North Sumatra, 2023.

³² Interview with Mrs. Mila, BPJS Staff at RSU Hajj Medan, 2023.

³³Supriadi and S. Rosania, "Review of Pending Claim Files for JKN Patients at Hermina Ciputat Hospital 2018," *J. Indonesian Vocational.*, vol. 7, no. 2, 2019. pp. 19–26

and medical research center.³⁴ 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.³⁵

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,

Table 1. Penalty Administration offense Hospital

No	Type Penalty	Information
1	Reprimand oral	Penalty Light
2	Written reprimand	Penalty Currently
3	Fines and revocation of hospital permits	Penalty Heavy

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 rupiahs).

- 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).³⁶

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.³⁷

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.³⁸

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

³⁴ Hendrik, *Health Ethics and Law*, (EGC: Jogjakarta. 2014). p. 70

³⁵ Law Number 44 of 2009 concerning Hospitals

³⁶ Alfi Andriansyah Harahap, "Denda Keterlambatan Pembayaran Iuran Bpjs Kesehatan Kabupaten Padang Lawas Utara Dalam Perspektif Ekonomi Islam," *Inisiatif: Jurnal Ekonomi*,

Akuntansi dan Manajemen 2, no. 1 (2023): 112–120.

³⁷ Dian Purnama Sari, Else Suhaimi, and Mahendra Kusuma, "Penerapan Denda Keterlambatan Iuran Peserta Jaminan Kesehatan Nasional Menurut Perpres No. 82 TAHUN 2018," *Law Dewantara* 1, no. 1 (September 1, 2021): 12–23.

³⁸ Law Number 7 of 2016 concerning the Fraud Prevention System

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.³⁹

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*).⁴⁰As 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) "⁴¹

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.⁴²

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.⁴³Participants also obtain their rights because BPJS Health or employer contributions also bear other participants. Therefore, there is a bond of mutual responsibility.⁴⁴

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 of⁴⁵ contributions and services point four, BPJS

³⁹ Faizal Nurmatias, Sulistyandari Sulistyandari, and Maula Dina, "Perspektif Hukum Islam Terhadap Iuran BPJS Kesehatan;" *IQTISHADUNA: Jurnal Ilmiah Ekonomi Kita* 6, no. 2 (December 29, 2017): 132–159.

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

⁴¹ Wahyu Abdul Jafar, "BPJS Kesehatan Syari'ah (Mengagas Prinsip-Prinsip BPJS Kesehatan Perspektif Saddu Dzarī'ah)," *Al-Istinbath: Jurnal Hukum Islam* 2, no. 2 December (December 27, 2017): 148–175.

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

⁴³ Rafiqi Rafiqi, Ridwan Ridwan, and Jessica Pramudhita Rizkyka Senduk, "Analisis Fatwa Dewan Syariah Nasional No:98/DSN-MUI/XII/2015 Tentang Pedoman Penyelenggaraan Jaminan Sosial Kesehatan Syariah Dalam Perspektif Ekonomi Islam (Studi Pada Penyelenggaraan BPJS Kesehatan)," *Jurnal Paradigma Ekonomika* 16, no. 4 (December 4, 2021): 851–858.

⁴⁴ Desi Tri Rahayu Wardaningrum and Yitno Pringgowijoyo, "Fatwa Badan Penyelenggara Jaminan Sosial (Bpjs) Kesehatan Dalam Konteks Hukum Islam," *Jurnal Kewarganegaraan* 3, no. 1 (June 1, 2019): 5–9.

⁴⁵ A. Wildan Na'im al Maftuh, "Skema BPJS Kesehatan Perspektif Fatwa DSN-MUI NO.21/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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