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LEGAL PROTECTION OF THE STATE HOSPITAL AS THE IMPACT OF INDONESIAN - CASE BASED GROUPS RATES POLICY

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Abstract**:** The purpose of this study is to analyze the legal consequences of implementing Indonesian Case Based Groups in Hospitals and to analyze government hospital laws on the implementation and services in hospitals as a result of the tariffs of Indonesian Case Based Groups. Several studies have found that a number of cases in hospitals have higher rates than BPJS Kesehatan payments, while other cases, for example with a lower severity level, hospital rates are still lower than INA-CBGs rates.The application of the INA-CBGS tariff in health services creates several legal consequences that intersect with administrative law in relation to abuse of authority, criminal law in relation to criminal acts of corruption and civil law in relation to the dispute resolution process, namely the existence of a mediation process beforehand. The form of legal protection for government hospitals in carrying out health services as a result of the INA CBGS Tariff is regulated in several regulations, namely as stated in Article 50 letter a. The Medical Practice Law and Article 75 of the Health Personnel Law, Article 45 of the Hospital Law paragraph (2), Article 58 of Law No. 36 of 2009 Concerning Health, and internally hospitals can also be regulated in Hospital by Laws and can also be in the form of a Director's Regulation Hospital.

Kata kunci: Legal protection, Legal Impact, INA CBGS rates

I. INTRODUCTION

The right to be healthy has been regulated in Article number 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) which states emphatically that every person has the right to live in physical and spiritual prosperity, to have a place to live, and to enjoy an environment live a good and healthy life and have the right to obtain health services. The regulation of the right to health into the constitution makes the right to health formally a positive law that is protected by the government and the government is obliged to fulfill the right to health of its citizens through real efforts. The right to health has a broader scope, not only regarding individual rights, but includes all factors that contribute to a healthy life (healthy self), such as environmental issues, nutrition, housing and others. Meanwhile, the right to health and the right to medical services are patient rights, which are more specific parts of the right to health (Isriawaty, 2015).

The government, in carrying out its duties, has 4 (four) main functions that must be carried out, namely: (1) the public service function (public service function), (2) development function (development function), (3) empowerment function (protection function), and (4) regulatory function (Putri & Murdi, 2019). Of the four functions, it does not have a level which means that all of them must be carried out by the government, but the public service function is considered very strategic because it can determine the government's role in providing good service to the community which is a form of public service. The basic philosophy of guaranteeing the right to health as a human right is the raison d'etre of human dignity (El-Muhtaj et al., 2008). Health is a fundamental right of every human being; therefore, every individual, family and community has the right to receive protection for their health, and the government is responsible for regulating and protecting it so that people's rights to live healthy are fulfilled, including the poor who can't afford it (Mardiansyah, 2018).

The embodiment of the right to health services in the 1945 Constitution of the Republic of Indonesia has regulated the rights and obligations of patients which are also specifically regulated in Article 32 of Law Number 44 of 2009 concerning Hospitals (hereinafter referred to as the Hospital Law). According to (Muninjaya, 2004) the general criteria for health services consist of:

1. The services provided are comprehensive for all people in an area (availability).
2. Services are carried out fairly, not exceeding the needs and reach of the community (appropriateness).
3. Services are carried out continuously (continuity).
4. Services are strived to be accepted by the local community (acceptability).
5. In terms of cost, health services must be affordable to the general public (affordable).
6. Management must be efficient (efficient)
7. The type of service provided must always be of good quality.

As regulated in the Regulation of the Minister of Health of the Republic of Indonesia. Number 3 of 2020. About. Classification and Licensing of Hospitals, what is meant by a hospital is a health service institution that organizes full individual health services that provide inpatient, outpatient, and emergency care services. Based on ownership, hospitals can be classified into two, namely government-owned hospitals and private-owned hospitals. Government-owned hospitals are hospitals that are established and fully managed by the government which have advantages including lower fees charged to patients compared to private hospitals, services with Askes cards, Social Security and Health Cards for poor families, fee rates relatively inexpensive/affordable inpatient units and relatively inexpensive drug delivery.

The dynamics of life in a society also take place in the health aspect, so that negligence sometimes arises and neglect of rights and obligations between patients and

doctors/health workers. This resulted in patients no longer trusting hospital services. In the end, these patients told and talked to other people about the quality of hospital services so that prospective patients were reluctant to use the services of the hospital in question. Service quality is the essence of the survival of an institution (Mahfudhoh & Muslimin, 2020) The quality revolution movement through an integrated quality management approach is a demand that cannot be ignored if an institution wants to live and develop rapidly. Quality or quality of health services usually refers to the ability of the hospital to provide services in accordance with health professional standards and acceptable to patients.

In Indonesia, the distribution of functions between the central government and local governments has been regulated in Law 32 of 2004 and PP no. 38 of 2007. Based on Law 32 of 2004 and PP no. 38 of 2007, the affairs that fall under the authority of the local government are divided into obligatory affairs and optional affairs. Mandatory affairs are government affairs that must be carried out by provincial and district/city regional governments, relating to basic services, such as education, health, environment and others. While optional affairs are government affairs that actually exist and have the potential to improve people's welfare in accordance with the conditions, peculiarities, and superior potential of the area concerned, for example maritime affairs and fisheries, forestry, agriculture and others. It is understood that health services are included in the mandatory affairs that must be carried out by local governments in order to improve the welfare of the people in the health sector in their regions (Podungge, 2010)

Public services, including the health sector, by government officials today still have many weaknesses, so they have not been able to meet the quality expected by the community. Research by the Indonesia Institute for Civil Society (INCIS) conducted on 480 respondents in Jakarta found that the performance of public services provided by local governments so far has not been satisfactory. The low quality of public services in various regions shows that local government efforts are still not optimal in improving service quality. Within the framework of the regional autonomy policy, service to the community in the health sector is one of the tasks of the local government which has been decentralized by the central government (article 22 of Law No. 32 of 2004).

Local governments have the authority to regulate their own government and household systems in the health sector by selecting policies that suit the needs and capabilities of the region. This regional authority is a logical consequence for achieve the effectiveness of service management, as well as a responsibility that must be carried out seriously by the local government. This shows the large role of the local government in providing services in the health sector so that there must be efforts from the local government to improve the quality of services in the health sector. However, the reality is that health services in the regions have not been able to meet people's expectations.

In order to provide legal certainty and protection to improve, direct and provide a basis for hospital management, a legal instrument that regulates hospitals as a whole is needed in the form of a law, then Law Number 44 of 2009 concerning Hospitals (RS Law) was issued, law The law is a new law regarding hospitals replacing the old rules. Furthermore, arrangements regarding the relationship between health workers (paramedics), hospitals and patients are scattered in various laws and regulations, namely the Hospital Law, the Health Law (which replaced Law Number 23 of 1992 concerning Health), and even this can be related to the Law Number 8 of 1999 concerning Consumer Protection, Law Number 25 of 2009 concerning Public Services, Law Number 11 of 2009 concerning Social Welfare, however, due to the many regulations related to this matter, conflicts often occur between one regulation with other regulations, which then results in an ineffective implementation level.

Since 2010, Indonesia has carried out significant reforms in the health sector, especially hospitals. The implementation of the National Health Insurance (JKN) aims to

improve the quality of public health in Indonesia by guaranteeing hospital access for every Indonesian citizen through social health insurance (universal coverage) (Hidayat et al., 2021) The Social Security Administering Body (BPJS) for Health has been entrusted with realizing this mission by expanding the number of people who have insurance, especially the poor whose health insurance is covered by the central and regional governments. Along with implementing JKN, the government has changed the method of paying for hospitals from retrospective to prospective methods through the adoption of Indonesian Diagnostic Related Groups (INA-DRGs). The aim is to increase the efficiency and quality of hospital services in Indonesia.

In 2014, BPJS Kesehatan introduced Indonesian Case Based Groups (INA-CBGs) which replaced Indonesian Diagnosis Groups (INA-DRGs) (Arfiani & Fahlevi, 2020) Operationally, the two systems are the same, that is, the hospital is paid based on the patient's main diagnosis and does not depend on how long the day of treatment is, the type of action performed and the costs incurred by the hospital. So this payment system is known as the package system. The use of the INADRGs/CBGs payment method is both an opportunity and a challenge for every hospital in Indonesia.

Researches related to the impact of Indonesian Diagnosis Groups and controlling hospital costs in Indonesian hospitals is still relatively rare. A number of studies have found that the INA-CBGs tariff is unable to cover hospital claims. One example is research by Budiarto & Sugiharto in 2013 which conducted a study on Jamkesmas patients who were treated with a diagnosis of coronary heart disease in 10 vertical hospitals. The research found that the accumulation of BPJS Kesehatan rates is greater than hospital claims. On the other hand, several other studies have found something different. For example, Handayani et al. (2018) found that the rates for 84 BLU/BLUD public hospitals were generally lower than the rates for INA-CBGs. Other studies have shown that the cumulative BPJS Kesehatan tariff is lower than hospital claims for patients with a primary diagnosis of coronary heart disease.
Several studies have found that a number of cases in hospitals have higher rates than BPJS Kesehatan payments, while other cases, for example with a lower severity level, hospital rates are still lower than INA-CBGs rates.

Based on the main issues above, the purpose of this research is to analyze the legal consequences of implementing Indonesian Case Based Groups in Hospitals and to analyze government hospital laws on the administration and services in hospitals as an impact on Indonesian Case Based Groups rates.

II. RESEARCH METHODS

This research is legal research in the form of normative juridical where in this study the researcher discusses doctrines or principles in the science of law, by seeking solutions to legal issues to identify the basic meanings of rights and obligations, legal events, legal relations and legal objects. This study examines the legal norms contained in certain laws and regulations legally written and systematically (Ali, 2021). In this study, researchers examined the legal norms contained in laws and regulations systematically and court decisions related to the problems to be examined to get answers to the problems above.

The approach method used to answer the problems in this study is the statute approach. This approach is carried out by examining all laws and regulations related to the legal issues being discussed. Conceptual approach (conceptual approach) This approach departs from the views and doctrines that developed in the science of law. (Marzuki, 2021)

To analyze the data, the researcher uses a descriptive analysis method because it does not use concepts expressed in scales or statistics, so it is carried out based on legal norms/rules, legal concepts or legal doctrine contained in the framework or literature review to answer the problems of this research. The legal material obtained is processed

systematically and conclusions are drawn which are the essence of this research, so that the purpose of writing this thesis can be achieved.

III. RESULT AND DISCUSSION

Legal Aspects as a Result of the Application of the INA-CBGS Tariff

BPJS Health cooperates with several government-owned and private hospitals to run the National Health Insurance Program. Based on Article 4 of the Regulation of the Minister of Health Number 71 of 2013, it is explained that a health facility cooperation agreement with BPJS Health is carried out between the leadership or owner of the authorized health facility and BPJS Health. Implementation in general of all types of hospitals throughout Indonesia, both government, private, and other types of hospitals. At the time the government makes payments through the system. At least there are two methods used by the government. The prospective payment method is a payment method made for health services whose amount is known before the health services are provided (Putri Miliana, 2022) The examples of prospective payments are global budget, Perdiem, Capitation and case based payments. No single financing system is perfect, each financing system has advantages and disadvantages. The choice of financing system depends on the needs and objectives of the implementation of the health payment. A prospective financing system is an option because: it can control health costs; encourage quality health services according to standards; Restrictions on health services that are not needed are excessive or under-used; Simplify claim administration; and Encouraging providers to carry out cost containment.

In Indonesia, the prospective payment method is known as Casemix (case based payment) and has been implemented since 2008 as a payment method for the Community Health Insurance (Jamkesmas) program. The casemix system is a grouping of diagnoses and procedures with reference to similar/same clinical features and similar/same use of resources/treatment costs, grouping is done using grouper software. The casemix system is currently widely used as the basis for health payment systems in developed countries and is being developed in developing countries.

Indonesian Diagnosis Groups (INA CBGS) is a payment system with a package system based on the patient's illness. The hospital will receive payment based on the INA CBGS rate which is the average cost spent by a diagnosis group. The application of the INA CBGS tariff for health services in Indonesia naturally raises several legal aspects that intersect with administrative law, criminal law and civil law. But overall, there are several laws and regulations that are used as a reference or guideline for the INA-CBGS Tariff, namely:

1. Law Number 36 of 2009 concerning Health
2. Law Number 24 of 2011 concerning Social Security Administering Bodies
3. Government Regulation Number 47 of 2016 concerning Health Service Facilities
4. Referring to Article 69 paragraph (1) and Article 73 paragraph (1) and paragraph (2) of Presidential Regulation Number 82 of 2018 concerning Health Insurance as amended several times, most recently by Presidential Regulation Number 64 of 2020 concerning Second Amendment to Presidential Regulation Number 82 of 2018 INA CBGS is stipulated in Minister of Health Regulation Number 59 of 2014 concerning Standard Health Service Tariffs in the Implementation of Health Insurance, so this is the legal basis for determining INA CBGS rates.
5. With the changes made by the Minister of Health, the INA-CBGS tariff has been redefined to be the latest, namely Regulation of the Minister of Health Number 3 of 2023 concerning Standards for Health Service Tariffs in the Implementation of the Health Insurance Program which replaces Regulation of the Minister of Health Number 64 of

2016 concerning Standards Tariff for Health Services in the Administration of Health Insurance.

6. Regulation of the Minister of Health of the Republic of Indonesia Number 76 of 2016 concerning Guidelines for Indonesian Case Base Groups (INA-CBGs) in the implementation of the National Health Insurance, the INA-CBGs system is one of the important instruments in submitting and paying claims for payment of health services that have been implemented by the Facility For Advanced Referral Health (FKRTL) who have collaborated with BPJS Health, the management and functional parties in each FKRTL need to understand the concept of implementing INA-CBGs in the JKN program.
7. Regulation of the Minister of Health Number 52 of 2016 concerning Standards for Health Service Tariffs in the Implementation of the Health Insurance Program as amended several times, most recently by Regulation of the Minister of Health Number 6 of 2018 concerning the Third Amendment to Regulation of the Minister of Health Number 52 of 2016 concerning Standards of Tariffs for Health Services in Implementation of the Health Insurance Program.
8. Regulation of the Minister of Health No. 3 of 2023 concerning Standard Health Service Tariffs in the Implementation of the Health Insurance Program
9. The Health Law which was passed at the plenary session of the DPR RI during the fifth session of the 2022-2023 session on July 11, 2023.

Legal Protection for Hospitals as a Result of the INA-CBGS Tariff

Legal protection is a means provided by the state through law enforcement officials or other agencies/institutions/media designated by the state specifically for that purpose, in order to protect the legal rights of members of the public who have been violated or threatened by other parties (Kahfi, 2016). As an example, in this case the hospital could be made a defendant or reported to the police and even complained to MKDKI (Indonesian Medical Discipline Honorary Council). As a result of the INA-CBGS Tariff, it is not uncommon for hospitals to receive complaints and even demands from patients because they are considered not providing optimal health services, which is beyond the control of the hospital management because from the hospital's point of view, it has carried out procedures according to the budget. available in government hospitals. As one of the preventive legal protection efforts for hospitals from the regional government, it could be in the form of making rules that facilitate the use of Regional Public Service Agency (BLUD) funds for operational support, even though in principle the business management of BLUDs is flexible, however, there are still many cases of criminal acts corruption that arises as a result of misuse of the BLUD funds.

Hospitals as parties providing health services have the rights regulated in Article 30 paragraph (1) of the Hospital Law, namely:

1. Receiving compensation for services

Practically, the right to receive compensation for services is often threatened with extinction, or the hospital must negotiate hard beforehand to get the compensation for services. Article 29 of Minister of Health regulations No. 69 of 2014 states:

a. Service fees as referred to in Article 28 letter g are payments for consultations, medical examinations, medical procedures and other services received, which are based on the patient's good faith in accordance with the services received.

b. In the event that the patient has not been able to fulfill the payment obligations as referred to in paragraph (2), then the patient may be given a grace period in accordance with the agreement between the patient or his family and the hospital.
c. The agreement at least contains a grace period, the method of paying off the underpayment and is signed by both parties.
d. The patient can leave the hospital if the patient or family has signed an agreement to undergo the process mediation in the event that a health worker is suspected of negligence in carrying out his profession

Based on Minister of Health regulations No.16/2014, it provides more legal protection for patients/families to be able to leave the hospital after signing the agreement even though there is no guarantee of payment for the remaining deficiencies, rather than protecting the rights of the hospital/medical personnel to receive compensation for services. If the patient/family does not comply with the contents of the agreement, what the hospital can do is submit a lawsuit to the court, something that will incur social costs, psychological costs, including of course court costs (lawyer hire, lawsuit fees, etc.)

2. Sue the party causing the loss

This right to sue can be used in the event that the hospital does not receive compensation for services to which it is entitled. The patient/family is considered to have defamed/defamed the hospital regarding the services provided. in the case of a lawsuit for slander/defamation, it is now not easy to do considering that Article 32 of the Hospital Law stipulates that every patient has the right to complain about hospital services that are not in accordance with service standards through print and electronic media in accordance with statutory provisions.

3. Get legal protection in carrying out health services
The right to legal protection is regulated in various laws and regulations:

a. Article 50 letter a. Medical Practice Law: Doctors or dentists in practicing medicine have the right to obtain legal protection as long as they carry out their duties in accordance with professional standards and standard operating procedures.
b. Article 75 Law on Health Workers: Health workers in practicing have the right to receive legal protection in accordance with the provisions of the Laws and Regulations.
c. Article 45 of the Hospital Law paragraph (2): Hospitals cannot be prosecuted for carrying out their duties in order to save human lives
d. Article 58 Law No.36 of 2009 Concerning Health:
   1) Everyone has the right to claim compensation against a person, health worker, and/or health provider who causes harm due to mistakes or negligence in the health services they receive
   2) Claims for compensation do not apply to health workers who take action to save lives or prevent someone from becoming disabled in an emergency

If you can't sue the health worker on the grounds of saving lives/preventing disability, then automatically the hospital is also free from the threat of claims for damages.

The phrase Legal Protection in terms of having provided health services according to professional standards, standard operating procedures and/or carried out in an emergency to save a person's life or disability above does not have any meaning in practice, because medical personnel or other health workers including hospitals where they work, they can still

be prosecuted by law exactly the same as if they provide sub-standard health services and/or not in an emergency situation.

What should be in every examination of health service disputes, both civil and criminal, is to facilitate the dismissal process first to examine and determine whether the health services provided comply with professional standards, standard operating procedures and/or are carried out in an emergency situation to save someone's life or disability. If it is not appropriate and/or not carried out in an emergency situation, the legal process can proceed to the next examination (examination of evidence until a decision is made), but if it is appropriate and/or carried out in an emergency situation, the legal process must be stopped (not until the examination of the instrument is carried out). evidence and so on).

Currently, no one has received a mandate from lawmakers to carry out the dismissal process stage, but judging from the existing duties and authorities, the Indonesian Medical Discipline Honorary Council (MKDKI) should be considered to carry it out.

4. Undergo a mediation process in the event that a health worker is suspected of negligence in carrying out his profession

5. Promote health services in hospitals in accordance with statutory provisions

   The right to undergo a mediation process first in the event that a health worker is suspected of negligence in carrying out his profession is regulated, among others, in:

   a. Article 29 of the Health Law "In the event that a health worker is suspected of negligence in carrying out his profession, the negligence must first be resolved through mediation". The word negligence is one of the elements in criminal offenses as stipulated, among others, in Article 359 of the Criminal Code "Whoever because of his mistake (negligence/schuld) causes another person to die, is punishable by imprisonment for a maximum of five years or imprisonment for a maximum of one year"

   b. Article 84 of the Law on Health Personnel "Any Health Worker who commits gross negligence which results in the Recipient of Health Services being seriously injured is subject to imprisonment for a maximum of 3 (three) years"

Practically, it may be concluded that there are no police officers who carry out this mediation process, considering that so far mediation forums are only known in the realm of civil law, not in the realm of criminal law. Even though the word must in the phrase must be completed first through meaningful mediation to state the fulfilment of a certain condition or requirement as stipulated in Law No.12/2011 concerning the Establishment of Legislation, CHAPTER I Regulatory Framework of Law Number 269

6. Get tax incentives for Public Hospitals and Hospitals designated as teaching Hospitals

   Several other regulations that mention protection for the hospital in the event of unwanted things beyond control are regulated in Article 27 of the Health Law "Health workers have the right to receive rewards and legal protection in carrying out their duties in accordance with their profession."

   Apart from that, hospitals can also make legal protection efforts with the Hospital By Laws system because with this, hospitals can provide legal protection for doctors or other medical personnel, and can also get legal protection from director regulations issued by the Director of the Hospital as head of the house. hospital which of course the article was negotiated with the hospital's legal team.

Hospitals are obliged to compile and implement Hospital Internal Regulations (Hospital by Laws) as stipulated in Law no. 44 of 2009 concerning Hospitals Article 29 paragraph (1) letter (r), in addition to other regulations stipulated by Hospitals as guidelines in managing Hospitals. In accordance with the Explanation of Article 29 paragraph (1) letter (r) of Law No. 44 of 2009 concerning Hospitals, Hospital Internal Regulations (Hospital by Laws) are Hospital organizational regulations (Corporate by Laws) and Hospital Medical Staff Regulations (Medical Staff by Laws) which are compiled in order to implement good corporate governance (Good Corporate Governance). Corporate Governance) and good clinical governance (Good Clinical Governance).

According to the JCAHO (Joint Commission on Accreditation of Health Organization) the main actor in making Internal Regulations in Hospitals is the "Governing Body" namely the holder of the highest authority (ultimate power) in the Hospital organization (Owner or representative). The party authorized to set internal regulations for a hospital is the owner or representative, so Hospital by Laws is a legal product from an organ that is higher than the Director of the Hospital.

The preparation of Hospital by Laws must be adapted to the conditions and needs of each Hospital as long as it does not conflict with applicable legal regulations and is guided by the Guidelines for Hospital By Law Arrangement, among others as stipulated in the Decree of the Minister of Health of the Republic of Indonesia No. 772/Menkes/SK/VI/2002 concerning Guidelines for Hospital Internal Regulations (Hospital by Laws), Decree of the Minister of Health No. 631/Menkes/SK/IV/2005 concerning Guidelines for Internal Regulations for Medical Staff (Medical Staff by Laws), then Hospital by Laws that have been determined must be disseminated to every layer of the Hospital organization.

Because Hospital by Laws is not a standard regulation that can be applied casually to every hospital and is not a regulation that contains individual provisions, but is a rule that also intersects with civil, criminal and administrative law. Therefore, it is highly recommended to consult a legal expert in its preparation. Hospital by Laws has the following functions:

1. As a reference for hospital owners in conducting hospital supervision.
2. As a reference for the director of the hospital in managing the hospital and formulating operational technical policies.
3. Means to ensure effectiveness, efficiency and quality.
4. Means of legal protection for all parties related to the Hospital.
5. As a reference for conflict resolution in hospitals between owners, hospital directors and medical staff.
6. To meet hospital accreditation requirements.

IV. CONCLUSION

Based on the finding of this research, the application of the INA CBGS tariff in health services creates several legal consequences that intersect with administrative law in relation to abuse of authority, criminal law in relation to criminal acts of corruption and civil law in relation to the dispute resolution process, namely the existence of a mediation process beforehand and is also alluded to in the rules the latest Regulation of the Minister of Health Number 3 of 2023 concerning Standard Health Service Tariffs in the Implementation of the Health Insurance Program and several other laws and regulations. In addition, the form of legal protection for government hospitals in carrying out health services as a result of the INA CBGS Tariff is regulated in several regulations, namely as stated in Article 50 letter a.

The Medical Practice Law and Article 75 of the Health Personnel Law, Article 45 of the Hospital Law paragraph (2), Article 58 of Law No. 36 of 2009 Concerning Health, and internally hospitals can also be regulated in Hospital by Laws and can also be in the form of a Director's Regulation Hospital.

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