Juridical Analysis of Claims Procedures and Legal Consequences for Fraud Actions by the Hospital to BPJS Kesehatan in Inpatient Care with the INA-CBGS System

Krisna[1], Megawati Barthos[2], Zudan Arif Fakrulloh[3]
junor70@yahoo.com[1],
barthos@borobudur.ac.id[2],
faisalrosady@gmail.com[3]

Abstract: The government began to fulfill the right to health by establishing a health BPJS since January 1, 2014. The BPJS Kesehatan payment system for hospitals uses the INA-CBGs tariff payment system, which is payment with package rates covering all hospital components. Since the introduction of the National Health Insurance (JKN) in Indonesia, the potential for fraud in health services has expanded. This study aims to reveal the procedure for claims and legal consequences of fraud by the hospital against BPJS Kesehatan in hospitalization with the INA-CBGS system. This research is a normative legal research and empirical law, namely research conducted by collecting legal materials both primary, secondary and or tertiary.

Keywords: Fraud, BPJS, INA-CBGSq

1. INTRODUCTION

Health is one of the determinants of the quality of human resources apart from education and the economy(Lind, 2014). Health is the basic right of every individual and all citizens are entitled to health services, including the poor(Ghebreyesus, 2017). In other words, the poor also want health insurance in hospitals by obtaining Social Security(Mahendrahata et al., 2017). The right to health is listed inLaw 36 of 2009, which explains that every citizen has the same right to get health services (Ardiansyah, 2020). Awareness of the importance of social protection security, the Government publishedBasic Law Number 40 of 2004 concerning the National Social Security System (SJSN) states that the principle of implementing the National Health Insurance is equality (equity) in getting access to health services as well as being effective and efficient in its operation.

From law number 24 of 2001 the government then created the Social Security Administering Bodies, namely; BPJS Health and BPJS Ketenagakerjaan. BPJS Kesehatan Since January 1, 2014 until now, BPJS Kesehatan has experienced many challenges in implementing the National Health Insurance (JKN) program, one of which is preventing potential fraud.(Sadikin & Adisasmito, 2016). The BPJS Kesehatan payment system for hospitals uses the INA-CBGs tariff payment system, which is payment with a package rate that includes all components of hospital resources used in both medical and non-medical services. Hospitals in Indonesia to determine the rate when the JKN system is applied based on INA CBGs (Case Base Groups) based on the grouping of disease diagnoses based on the grouping of the rates itself, thus the provision and application of Hospital rates in that grouping are called insurance diagnoses. The difference between clinical diagnoses made by doctors and grouping diagnoses from INA CBGs software tends to be upcoding(Agiwahyuanto et al., 2016).

*Fraud*is a new term known to the world of health in Indonesia since the implementation of the national health insurance system (JKN) with the national health social security administering body (BPJS). This is due to a change in the health financing system from fee for service (out of pocket) to payment by health insurance, with the INA-CBG claim payment mechanism for hospitals.

Since the implementation of the National Health Insurance (JKN) in Indonesia, the potential for fraud in health services has expanded due to pressure from the new financing system, opportunities due to lack of supervision and there is justification for committing fraud(Djasri et al., 2016; Sunarti et al., 2020). For the tariff that took effect on January 1, 2014, an adjustment has been made to the INA-CBG Jamkesmas rate and has been stipulated in the Minister of Health Regulation Number 69 of 2013 concerning Standard Health Service Rates at First Level Health Facilities and Advanced Level Health Facilities in the provision of Health Insurance.

Fraud (fraud) in the BPJS needs to be prevented so as not to cause losses(Khoiri et al., 2020). This is as mandated in article 7 of the Minister of Health Regulation Number 36 of 2015 that in the implementation of the Health Insurance program in the National Social Security system, BPJS Kesehatan, District / City Health Offices, and FKRTL in collaboration with BPJS, must build a JKN fraud prevention system. This study aims to reveal the procedure for claims and legal consequences of fraud by the hospital against BPJS Kesehatan in hospitalization with the INA-CBGS system.

2. LITERATURE REVIEW

Legal Certainty Theory

Legal certainty is something new, but the traditional values of justice and benefit have existed before the era of modern law. According to Gustav Radbruch's opinion, legal certainty is "Scherkeit Des Rechts Selbst" (legal certainty about the law itself)(Mubayyinah, 2019). There are 4 (four) things related to the meaning of legal certainty, including: 1) Whereas law is positive, meaning that it is legislation (gesetzliches Recht); 2) that this law is based on facts (Tatsachen), not a formulation of an assessment that will be carried out by the judge, such as "goodwill", "decency"; that the fact must be formulated in a clear manner so as to avoid confusion in meaning, as well as being easy to implement. ; 3) positive law must not be changed frequently and 4) Legal consequences, are a result of actions taken, to obtain a result expected by legal actors(Leawoods, 2000). The legal consequences in question can be:

1. Birth, change or disappearance of a legal state. For example, the legal consequences can change from legally incompetent to legal when a person is 21 years of age.
2. Birth, change or disappearance of a legal relationship between two or more legal subjects, in which the rights and obligations of one party face the rights and obligations of the other. For example, X entered into a house lease agreement with Y, then a legal relationship was born between X and Y when the house lease ended, which was marked by the fulfillment of all the rental agreements, then the legal relationship would vanish.
3. The birth of a sanction if an action against the law is carried out.

Fraud

Fraud is an action taken by participants, BPJS Kesehatan officers, drug and medical device providers deliberately by obtaining financial benefits from the program through fraudulent acts that are not in accordance with the provisions(Rizka et al., 2018). In Regulation of the Minister of Health number 36 of 2015 fraud is fraud (Fraud) in the Implementation of the Health Insurance Program in the National Social Security System, hereinafter referred to as JKN Fraud, is an act committed deliberately by participants, BPJS Kesehatan officers, health service providers, and drug providers and medical devices to

obtain financial benefits from the health insurance program in the National Social Security System through fraudulent acts that are not in accordance with the provisions.

BPJS Health

Social Security Administering Bodies, hereinafter abbreviated as BPJS, are legal entities established to administer social security programs(Basic Law Number 40 of 2004). The BPJS program is carried out by collaborating with several private and government-owned hospitals(Suhartoyo, 2018). As the name implies, BPJS Kesehaan provides several facilities and services for its users. In accordance with the sound of CHAPTER IV letter C Regulation of the Minister of Health Number 28 of 2014 regarding the guidelines for implementing the national health insurance program, several health facilities and services guaranteed by BPJS are:

1) Service administration.
2) Examination, treatment and specialist consultation by a specialist and sub specialists.
3) Specialized medical measures, both surgical and non-surgical are appropriate with medical indications.
4) Medicines and consumable medical materials.
5) Further diagnostic support services in accordance with medical indications.
6) Medical rehabilitation.
7) Blood service.
8) Clinical forensic medical services.
9) Service to the corpse (pemularasan corpse) to patients who died in a health facility (excluding coffins)
10) Non - intensive hospitalization.
11) Inpatient care in intensive care
12) Medical acupuncture.

INA– CBGS system

INA - CBGs (Indonesia Case Base Groups) is a system where the amount of claim payments by BPJS Kesehatan to advanced level referral health facilities is a codification system of final diagnosis and actions or procedures which are service outputs that refer to Internatonal Code Diseases Ten (ICD 10) and the International Code Diseases Nine (ICD 9) Clinical Modification (CM) compiled by the World Health Organization (WHO) (PERMENKES 27/2014). Based on the Minister of Health Regulation Number 27 of 2014 concerning the Technical Guidelines for the Indonesian Case Base Groups (INA - CBGs) system states that INA CBGs are one of the patient data entry devices used to group rates based on data derived from medical resumes.(Satibi et al., 2019). To use the INA - CBGs application, a hospital must have a hospital registration code issued by the Directorate General of Health Efforts and then activation for each hospital according to the class of hospital and its regionalization.(Nurwahyuni, 2019; Tamtomo, et al., 2017)

3. METHOD

Types of research

This research is a normative legal research and empirical law, namely research conducted by collecting legal materials, both primary, secondary and or tertiary.(Mahmud Marzuki and Peter Mahmud, 2011). Primary legal materials are binding legal materials, secondary legal materials provide explanations or further information regarding primary legal materials, while tertiary legal materials are supporting materials that provide guidance and explanation for existing primary and secondary legal materials. Data records in the field, researchers do to get answers or solutions to problems (legal issues) that have been formulated. The following shows primary, secondary and tertiary legal materials.

Primary Legal Materials	1. Law No. 24 of 2011 concerning BPJS; 2. Law No. 40 of 2004 concerning SJSN; 3. Law No. 36 of 2009 concerning Health; 4. Law No. 44 of 2009 concerning the Hospital; 5. Law No. 12 of 2013 concerning JKN; 6. Code of Civil law; 7. Permenkes No. 71 of 2013 concerning Health Services at JKN
Secondary Legal Materials	Articles on several internet sites; related books in the form of writings, opinions of legal experts, articles, literature related to problems in research, health, hospitals and others relevant to research.
Tertiary Legal Materials	Tertiary legal materials in the form of dictionaries, encyclopedias, and other works related to and complementary to research on the completion of BPJS implementation held by the Government in Hospitals.

To avoid irregularities and confusion in the discussion, researchers also conducted literature studies and interviews. The literature study is carried out by looking for data information in the form of writing in the form of a thesis, thesis, scientific books, research results, magazines which are then concluded(Sugiyono, 2015). Thus the data studied in a study can be in the form of data obtained through library materials, while interviews in this study are carried out as a complement to existing secondary data.

Data Presentation Method

The legal materials that have been collected are presented in the form of a description. The legal materials obtained in this research will be presented in the form of descriptions arranged systematically following the flow of systematic discussion. In the sense that the entire material obtained is then connected to one another with the subject matter, so that it becomes a unified whole.

Data analysis

Legal materials obtained in literature study research are supported by field research, statutory regulations, and the articles referred to by the author, describe and link them in such a way that they are presented in a more systematic writing in order to answer the problems that have been formulated. Whereas the method of processing legal materials is carried out deductively, namely drawing conclusions from a general problem regarding the concrete problems being faced.

4. RESULTS AND DISCUSSION

The results of research on "Juridical Analysis of Claims Procedures and Legal Consequences for Fraud Actions by the Hospital to BPJS Kesehatan in Inpatient Care with the INA-CBGS System"This will be explained by two main points, namely 1). SettingsClaims Procedure Hospitals to the Health Social Security Administering Bodies related to inpatient care with the INA CBGs system. 2). Legal Consequences for Fraud Actions by the Hospital to BPJS Kesehatan in Inpatients with the INA - CBGS System. The explanation is as follows:

Hospital Claims Implementation Arrangement to Inpatient Health Social Security Administering Bodies with the INA CBGs system.

In general, the implementation of hospital claims to BPJS is based on the following laws and regulations: 1) Law Number 40 of 2004 concerning the National Social Security

System; 2). Law Number 24 of 2011 concerning Social Security Administering Bodies, 3). Presidential Regulation Number 12 of 2013 concerning Health Insurance, 4). Regulation of the Minister of Health Number 69 of 2013 concerning Standard Health Service Rates at First Level Health Facilities and Advanced Level Health Facilities in the administration of Health Insurance, and 5). Regulation of the Minister of Health Number 71 of 2013 concerning Health Services in National Health Insurance.

Based on Article 5 paragraph (3) of Law no. 40 of 2004 concerning the National Social Security System states that the Social Security Administering Body (BPJS) is a substitute for the existing Social Security program, namely the Employment Company (Persero) Social Security for Workers (JAMSOSTEK), the Limited Liability Company (Persero) Savings and Insurance Funds. Civil Servants (TASPEN), Limited Liability Companies (Persero) Social Insurance of the Indonesian Armed Forces (ASABRI) and the Indonesian Health Insurance Company (Persero)(BPJS Health, 2004).

In running the National Health Insurance Program, BPJS Kesehatan collaborates with several government-owned and private hospitals(Suhartoyo, 2018). Based on Article 4 of the Minister of Health Regulation Number 71 of 2013, it is clear that the agreement between the health facilities and BPJS Kesehatan is made between the leadership or owner of the authorized health facility and BPJS Kesehatan(Sari, 2015). Implementation in general, all types of hospitals throughout Indonesia, including government hospitals, private hospitals, and other types of hospitals(Sriatmi et al., 2014). At this time the government made payments through the system. There are at least two known methods used by the government. Prospective payment method is a method of payment made for health services, the amount of which is known before health services are provided(Rukmini & Oktarina, 2018). Examples of prospective payments are global budget, Perdiem, Kapitasi and case based payment. No single financing system is perfect, every financing system has advantages and disadvantages(Wijayanti & Sugiarsi, 2013).

The choice of the financing system depends on the needs and objectives of implementing the health payment.Application of the Payment Pattern for Ina-Cbgs Bpjs for Health in Regulation and Implementation Review. In Proceedings of the National Seminar and Call for Papers "Challenges to the Development of Accounting Science, Financial Inclusion, and Its Contribution to Sustainable Economic Development(Ananta, 2016).The prospective financing system is an option because: it can control health costs; encouraging health services to remain of quality according to standards; Restricting unnecessary health services are overused or under-used; Simplify claims administration; and Encourage providers to carry out cost containment(Bausat, 2014).

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 Public Health Insurance (Jamkesmas) program.(Rivany, 2009). The casemix system is a grouping of diagnoses and procedures with reference to similar / similar clinical features and the use of similar / same treatment resources / costs, grouping is done using grouper software(markam, 2020). The casemix system is currently widely used as the basis for health payment systems in developed countries and is being developed in developing countries.

Based on Chapter IV letter C Regulation of the Minister of Health Number 28 of 2014 concerning Guidelines for the Implementation of the National Health Insurance Program explains that there are several health facilities and services that are guaranteed and that are not guaranteed by BPJS health, including:

a. Guaranteed Health Facilities and Services:
   1) Service administration.
   2) Examination, treatment and specialist consultation by specialist doctors and sub specialists.

3) Specialized medical action, both surgical and non-surgical according to medical indications.
4) Medical services and consumable medical materials.
5) Advanced diagnostic support services according to medical indications.
6) Medic rehabilitation.
7) Blood service.
8) Clinical forensic medicine services.
9) Funeral services (transmitting bodies) to patients who die in health facilities (excluding coffins).
10) Non - intensive hospitalization.
11) Inpatient care in intensive care.
12) Medical acupuncture.

Promotional and preventive service benefits or facilities include:

1) Individual health counseling, covering at least counseling on the management of disease risk factors and hygiene and healthy living habits.
2) Basic immunizations, including Baccile Calment Guerin (BCG), Diphtheria Pertussis Tetanus and Hepatitis-B (DPT-HB), Polio and Measles.
3) Family planning, including counseling, basic contraception, vasectomy, tubectomy, including complications of family planning in collaboration with institutions in charge of family planning.
4) Vaccines for basic immunization and basic contraceptives are provided by the Government and / or Local Governments.
5) Certain health screening services are provided selectively to detect disease risks and prevent further effects, namely: Diabetes Mellitus type II; Hypertension; Cervical Kenker; Breast cancer; Other diseases stipulated by the Minister.
6) Certain health screening services in point (5) are services that fall within the scope of non-capitation, which are implemented in accordance with the provisions of the Prevailing Laws. Supporting examinations for health screening services include: Blood Sugar Checking; IVA examination for cases of Ca Cervix; Pap Smear examination
7) Especially for cases with a positive IVA examination, Cryotherapy services can be performed. (Minister of Health Regulation Number 28 of 2014)

1. INA - CBGs system

INA - CBGs (Indonesia Case Base Groups) is a system where the amount of claim payments by BPJS Kesehatan to advanced level referral health facilities is a codification system of final diagnosis and actions or procedures that are service outputs referring to Internatonal Code Diseases Ten (ICD 10) and the International Code Diseases Nine (ICD 9) Clinical Modification (CM) compiled by the World Health Organization (WHO)(Ode, DWW, Karimuna, SR, & Munandar, 2016). Based on the Minister of Health Regulation Number 27 of 2014 concerning the Technical Guidelines for the Indonesian Case Base Groups (INA - CBGs) system states that INA CBGs are one of the patient data entry tools used to group rates based on data from medical resumes.(Bayu Cakra Adhy Nugraha *, 2016). To use the INA - CBGs application, a hospital must have a hospital registration code issued by the Directorate General of Health Efforts and then activation for each hospital according to the class of hospital and its regionalization.(Handayani, 2016).

2. What Should the Hospital Do and Not Do

Based on Chapter V of the Minister of Health Regulation Number 27 of 2014 concerning Technical Guidelines for the Indonesian Case Base Groups (INACBGs) system, it explains that the hospital must pay attention to what efforts the hospital should make and what the hospital should not do in carrying out claims with BPJS health includes:

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a. Efforts that should be done by the hospital:

1) Build a hospital team

Management and the profession as well as other hospital components must have the same perception and commitment and be able to work together to produce quality and cost effective hospital service products. Not just for the maximum profit. As a team, all hospital components must understand the concept of package rates, where it is possible for a particular case or group of CBG to have a positive difference and in the same case or group of CBG cases in different patients or in other CBG groups have a negative difference. A positive surplus or difference in a case or CBG group can be used to cover the negative difference in another case or group of CBG (cross subsidies). So that hospital services continue to prioritize service quality and patient safety.

2) Increase efficiency

Efficiency is not only carried out on the process side such as the use of pharmaceutical resources, consumable medical equipment, length of stay, supporting examinations which are generally a professional area but also on the input side such as planning and procurement of goods and services which are generally management areas / responsibilities. The process side generally emphasizes the effectiveness aspect while the input side generally emphasizes the efficiency aspect. Both must be able to interact to produce cost effective service products. The process side in terms of efficiency must also be able to reduce or even eliminate excess and unnecessary services (over treatment and / or over utility). Such as excessive drug use / selection and non-selective investigations and no strong indication. Efficiency must also be carried out on general costs such as the use of electricity, water, office supplies and others. Inefficiencies in both the input and the process side will have an effect on the cost / cost of producing expensive hospital services.

3) Improve the quality of medical records

INA-CBGs rates are largely determined by the service output which is reflected in the final diagnosis (both primary diagnosis and secondary diagnosis) and the procedures performed during the treatment process. The completeness and quality of medical record documents will greatly affect the coding, grouping and rates of INA-CBGs.

4) Improve the speed and quality of claims

The speed and quality of claims will affect the hospital cash flow. The speed of claims is greatly influenced by the speed at which medical record files are completed. So that the hospital must organize a good medical record service system so that the speed and quality of medical records can improve and increase the hospital cash flow.

5) Standardize

It is necessary to continue to develop standard inputs and processes at the hospital level. Standard input, for example pharmaceuticals, consumable medical equipment. It is necessary to make a hospital formulary (planning), it is necessary to make a standard for the procurement of hospital drugs (e catalog and or auction), a standard for writing prescriptions, for example a doctor only writes a generic name, while the drugs given are based on the results / acquisition of procurement. Process standards such as PPK / SPO and / or clinical pathways. The decision / standard setting process will greatly influence the decision making on the input standard.

6) Formed the Hospital's Casemix Team / INA-CBG Team

The Casemix team / INA-CBGs team at the hospital will be the driving force to help socialize, monitor and evaluate the implementation of INA-CBGs in the hospital.

7) Make use of claim data.

Hospital INA-CBGs data can be used / utilized not only for claims but also can be used to assess hospital performance and human resource performance, especially the

medical profession. INA-CBGs data can also be combined with HIMS (Health Information Management System) data and can even be compared with other hospitals in its class. So the INA-CBGs data and claims data can be used as material for decision making / policy at the hospital level.

8) Conduct a post-claim review

Post-claim reviews that are carried out periodically are very important in determining policies related to cost and quality control in the services provided. Ideally, this review activity involves all units in the hospital both management, professional staff, as well as support and support units and is carried out with data that has been analyzed by the hospital's Casemix team.

9) Payment for medical services

Changes in the hospital payment method using the INACBGs package method should be followed by changes in the payment method for medical services. Payment for medical services should be adjusted using a performance-based remuneration system.

10) In the future, it is hoped that all JKN provider hospitals can contribute to sending coding data and costing data so that rates can be generated that reflect the actual cost of services at the hospital.(Minister of Health Regulation Number 27 of 2014, nd).

b. What should the hospital not do? The implementation of INA-CBG should be carried out correctly and with full responsibility from all parties. The hospital should not do the following:

1) Change or uninstall software.
2) Adding a diagnosis that does not exist in patients who are given care for the purpose of increasing the severity or for the purpose of obtaining a grouping in a larger tariff group.
3) Adding procedures that are not performed or there is no evidence of inspection for the purpose of obtaining grouping on a larger tariff group.
4) Inputting diagnoses and procedures up to the grouping process several times in order to get a larger tariff group.
5) Upcoding, that is, intentionally providing coding with the aim of increasing payments to hospitals.
6) Manipulate the diagnosis by increasing the level of action types. For example: an uncomplicated appendiectomy is billed as an appendiectomy with complications, which requires major surgery so it charges a higher rate.
7) Providing services with poor quality. For example: shortening the hours of polyclinic services, services that can be completed in one day are carried out on a different day, not doing the supporting examinations that should be done, not giving drugs that should be given, and limiting the number of beds available at the hospital for JKN participants(Minister of Health Regulation Number 27 of 2014, nd).

3. Legal Consequences for Fraud Actions by the Hospital to BPJS Kesehatan in Inpatients with the INA - CBGS System

In Permenkes Number 16 of 2019 in CHAPTER III concerning Imposition of Administrative Sanctions in Article 6 it is explained that in the framework of supervision, the Minister, Head of the Provincial Health Service, Head of Regency / City Health Service can impose administrative sanctions for any person or corporation as referred to in Article 2 which committing fraud (fraud) including fraud oleh Hospital To BPJS Kesehatan in Inpatient with the INA– CBGS System(Setialingsih, 2019).Administrative sanctions as written in Article 1 Permenkes Number 16 of 2019, namely in the form of a) oral warning b) written warning c) order to return losses due to fraud (fraud) to the injured party(Decree No. 16 Year 2019, nd). In the case of fraud committed by BPJS Kesehatan officers, health service providers, and drug and medical device providers, administrative sanctions as referred to in Article 6 paragraph (2) Permenkes Number 16 Year 2019 can

be followed by additional sanctions in the form of fines given to the injured party(Faturrachman, 2018). In addition, fraud is committed by health workers, health service providers, and providers of medicines and medical devices, administrative sanctions as referred to in Article 6 paragraph (2) can be followed by license revocation in accordance with the provisions of laws and regulations. In that case the administrative sanctions as described in Article 6 in paragraph (2) cannot remove criminal sanctions in accordance with the provisions of the legislation(SAPUTRA, 2015). Article 7 also explains the consequences imposed on the perpetrator of fraud (fraud) in accordance with the category of violations, which are divided into a) minor b) moderate c) severe violations. OnArticle 8 Permenkes Number 16 Year 2019 describes the sanctions and categories of violations as follows:

1. Verbal warning sanctions can be imposed for the category of minor offenses.
2. Written warning can be imposed for the category of minor or moderate violations.
3. Sanctions for orders to return losses due to fraud (fraud) to the aggrieved party can be imposed for the categories of minor violations, moderate violations or serious violations.
4. Additional sanctions in the form of fines may be imposed for the category of moderate or serious violations.
5. Additional sanctions in the form of license revocation can be imposed for the category of serious violations(Decree No. 16 Year 2019, nd).

5. CONCLUTION

The implementation of hospital claims to BPJS is based on the following laws and regulations: 1) Law Number 40 of 2004 concerning the National Social Security System; 2). Law Number 24 of 2011 concerning Social Security Administering Bodies, 3). Presidential Regulation Number 12 of 2013 concerning Health Insurance, 4). Regulation of the Minister of Health Number 69 of 2013 concerning Standard Health Service Rates at First Level Health Facilities and Advanced Level Health Facilities in the administration of Health Insurance, and 5). Regulation of the Minister of Health Number 71 of 2013 concerning Health Services in National Health Insurance. As well as the consequences of fraud by the hospital against BPJS health in hospitalization with the INA-CBGs system has been regulated in article 8 of the Minister of Health Number 16 of 2019 which explains the sanctions and categories of violations in accordance with those committed.

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