

## LEGAL ANALYSIS OF THE IMPACT OF LAW ENFORCEMENT ON FRAUD PERPETRATORS IN THE JKN PROGRAMME

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### ABSTRACT

*BPJS Kesehatan, which runs the JKN programme, has the largest number of participants in Indonesia, with 98.21% of the Indonesian population enrolled as of 1 June 2025. The objective of the JKN programme is to provide the public with access to affordable and quality health services. There are many debates and issues faced in maintaining the sustainability of the JKN programme, one of which is fraud committed by health facilities. The absence of sanctions or firm action against perpetrators of fraud encourages them to repeat their actions. This study aims to analyse the effect of law enforcement on perpetrators of fraud. This study uses a normative juridical method with a statute approach and a conceptual approach. The research approach was conducted by examining various legal reference materials (secondary data). The results of the study show that law enforcement against fraud perpetrators as stipulated in Minister of Health Regulation (Permenkes) No. 16 of 2019 has not had a deterrent effect and taken firm action against perpetrators because the sanctions imposed are only administrative in nature, such as verbal and written warnings, compensation and revocation of licences, and the types of fraud that need to be updated. Based on legal analysis, efforts are needed to reform sanctions against fraud perpetrators and to clearly divide tasks among PK JKN team members. Support from the entire JKN ecosystem is also needed in enforcing sanctions against fraud perpetrators. Stronger regulations will reduce the desire to commit fraud in JKN and combat fraud.*

**Keywords:** Fraud, Enforcement of Sanctions, Types of Fraud, JKN Programme.

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### INTRODUCTION

The recognition of the right to health in the constitution is not merely a formality, but a reflection of the state's commitment to ensuring that everyone, without exception, can live a dignified life. This right to health encompasses more than just the fulfilment of basic needs such as food and shelter; it also includes access to quality health services, a clean and safe environment, and support for mental health and spiritual well-being. In other words, health is not only seen as the absence of disease, but as a holistic state that encompasses physical, mental and spiritual well-being.<sup>1</sup>

Article 28 of the 1945 Constitution states that the right of every citizen to health is a fundamental right of the Indonesian health system. In accordance with the ideals of the Indonesian state as outlined in Pancasila and the 1945 Constitution, health is a right of all people as a component of welfare. Furthermore, Health Law No. 17 of 2023 stipulates in Article 4 Paragraph 1 that every person has the right to physical, spiritual, and social life, as well as to safe, high-quality, and affordable health services to achieve the highest possible

level of health. This is in line with the hopes and ideals of this nation, as written in the 1945 Constitution of the Republic of Indonesia.<sup>2</sup>

A healthy life is the most fundamental right and necessity for a person to perform their duties well. Article 34 of the 1945 Constitution of the Republic of Indonesia also emphasises in paragraph 2 that “The state shall develop a social security system for all citizens and empower the weak and incapable in accordance with human dignity”, and in paragraph 3 that “The state shall be responsible for providing adequate health care facilities and public service facilities.” Therefore, in order to meet all the health needs of the community and so that they can be enjoyed comprehensively, the state strives to reduce the cost of health services, especially for the underprivileged, through the National Health Insurance (JKN) policy programme. To provide certainty in the provision of equitable and comprehensive health services to everyone in Indonesia, the JKN programme was established by the government. To ensure the welfare of the community in relation to health insurance, Law No. 40 of 2004 concerning the National Social Health Insurance System was enacted.<sup>3</sup>

BPJS Kesehatan, through the JKN programme, is tasked with ensuring that every citizen, regardless of economic or social status, has access to the necessary healthcare services, ranging from basic to specialised care. The programme is also designed to guarantee the sustainability of healthcare services by managing resources effectively and efficiently. In this context, BPJS Kesehatan acts as a bridge between the community and healthcare facilities, ensuring that the healthcare needs of the community are met with quality services that are evenly distributed throughout Indonesia.

BPJS Kesehatan with the National Health Insurance Program (JKN) is a national strategic programme that aims to provide access to quality and equitable health services in accordance with the mandate of the 1945 Constitution. The JKN programme was effectively implemented by the government on 1 January 2014. The programme implements a health insurance system which is then paid according to the tariff standards set by the government. According to Regulation of the Minister of Health of the Republic of Indonesia Number 26 of 2021 concerning Guidelines for Indonesian Case Base Groups (Ina-CBG) in the Implementation of National Health Insurance, JKN claim payments are regulated in the INA-CBG (*Indonesian Case Base Groups*) application system. The INA-CBG system is an important instrument in the submission and payment of health service claims that have been implemented by FKRTL in collaboration with BPJS Kesehatan. The INA-CBG tariff calculation is based on costing data and hospital coding data. The tariffs charged to patients are adjusted in accordance with WHO recommendations, namely the International Classification of Diseases (ICD). The system covers all health services that will be received by patients and the amount of treatment tariffs required until the patient is declared cured or during a period of hospitalisation.<sup>4</sup>

<sup>2</sup>Desti Fajarwati et al., “Analisis Yuridis Penegakan Hukum Atas Kecurangan (Fraud) Fasilitas Kesehatan Terhadap Penerima Jaminan Kesehatan Nasional Dalam Pelayanan Medis”, *Jurnal Cahaya Mandalika*, Vol. 5 No. 2 (2024), pg. 899–912.

<sup>3</sup>Arief Budiono dan Wafda Vivid Izziyana, “Kebijakan Penyelenggaraan Sistem Jaminan Sosial Nasional Melalui BPJS dengan Sistem Asuransi”, *Jurnal Law Pro Justitia*, Vol. II No. 1 (2016), pg. 52–70. “Everyone has the right toward social warranty that allows the development of his or herself as a dignified human being” and article 34 point 2 in the Constitution of the Republic of Indonesia in 1945 which reads, “The state develops a social warranty system for all people and empower the weak society and incapable to conform the human dignity.” This is the basis that Indonesia must strive with all the powers in order to make the prosperous society and obtain health services equitably and fairly. The government has been trying to accomplish the constitutional mandate in implementing social warranty system with attestation of constitution No.24 in 2011 concerning The Social Warranty Institution containing the institution which implementing the policy in carrying out the constitutional mandate in order to develop social warranty system in Indonesian and the establishment of The Social Warranty Institution (BPJS)

<sup>4</sup>Zulfadli Yusuf et al., “Fraud pada Program Jaminan Kesehatan Nasional Perpektif: Kompetensi Auditor Internal dengan Pendekatan Fenomenologi”, *Owner*, Vol. 6 No. 4 (2022), pg. 3653–3669.

Figure 2 Overview of the JKN Programme until 1 June 2025



Source: BPJS Health, June 2025.

As of 1 June 2025, the number of JKN participants has reached 279,900,523 people, or around 98.21% of Indonesia's total population. There are around 23,475 FKTPs and 3,140 FKRTLs that have collaborated with BPJS Kesehatan. Along with the increase in the number of participants and cooperating health facilities, the burden of health service coverage has also increased from Rp42.65 trillion in 2014, when it was established, to Rp158.85 trillion in 2023, and then to a significant increase in 2024 to Rp174.90 trillion. Managing a very large number of participants with very high healthcare costs is a challenge for the sustainability of the JKN programme. Since the JKN was first implemented until now, there have been many challenges in maintaining the sustainability of the JKN. In addition to the enormous cost of benefits, which is not commensurate with the monthly JKN contributions, another challenge is fraud in the implementation of the JKN programme in Indonesia, both by healthcare providers and JKN participants themselves. In the context of the implementation of the JKN programme itself, fraud is defined as actions deliberately carried out by BPJS Kesehatan officers, JKN participants, healthcare providers, medicine or medical equipment suppliers, and stakeholders with the aim of obtaining financial gain from the health insurance programme..

The definition of fraud according to Minister of Health Regulation No. 16 of 2019 concerning the Prevention and Handling of Fraud (fraud) and the Imposition of Administrative Sanctions for Fraud (fraud) in the Implementation of the Health Insurance Programme is defined as the deliberate act of obtaining financial gain from the National Social Security System in the Health Insurance programme through fraud or actions that deviate from the provisions of the law.<sup>5</sup> Fraud can be committed by parties providing health services or health facilities, BPJS Kesehatan, or participants..

To prevent fraud based on Minister of Health Regulation No. 16 of 2019, a Fraud Prevention Team must be formed at the central, provincial and district/city levels to prevent and handle fraud. The duties of the JKN Fraud Prevention Team include disseminating regulations and a culture oriented towards quality control and cost control, promoting a culture of fraud prevention, encouraging the implementation of good organisational and/or clinical governance, detecting and resolving fraud, monitoring and evaluation, and reporting. Despite the formation of the JKN PK Team, there are still those who commit fraud that is detrimental to the JKN Programme. Fraud in healthcare is a form of cheating that can be committed by all parties involved in the JKN ecosystem. Several types of fraud by healthcare providers in Advanced Referral Health

Facilities (FKRTL) include: manipulating diagnoses and/or actions, copying claims from other patients (*cloning*), false claims, inflating bills for medicines and/or medical devices (*Inflated bills*), splitting service episodes, self-referrals (*self-referrals*), repeat billing or claims (*repeat billing*), prolonged length of stay (*prolonged length of stay*), manipulation of room charges (*manipulation of room charges*), billing for procedures not performed, withdrawing fees from participants that are not in accordance with the provisions of laws and regulations, giving and/or receiving bribes and/or rewards related to Health Insurance and falsifying Work Practice Licences and Health Facility Operational Licences.

Figure 1 Types of Potential Fraud in Bali, NTT, and NTB Regions in 2024

No	Fraud Perpetrator	Types of Potential Fraud Based on PMK 16 of 2019
1	Healthcare provider	The division of service episodes is in accordance with medical indications but does not comply with the provisions of laws and regulations.
2	Healthcare provider	The unbundling of services that are not in line with medical indications
3	Healthcare provider	Performing medical treatment that is not in accordance with medical indications
4	Healthcare provider	Falsifying Health Worker Practice Licences and Health Facility Operating Licences
5	Healthcare provider	Manipulating room charges
6	Healthcare provider	Extending the length of treatment (prolonged length of stay)
7	Healthcare provider	Self-referrals
8	Healthcare provider	Menagihkan tindakan yang tidak dilakukan

Source: BPJS Health, December 2024

Based on the potential data in the Bali, NTB, and NTT regions, the potential for fraud was obtained from health service providers. If we look again in the field, each FKRTL has also formed a fraud prevention team and requires each FKRTL to ensure that the claims submitted show no indication of fraud. If we explore further, there is a theory that causes a person to commit fraud. In this case, we take the example of fraud perpetrators in the health service provider sector. the three factors are referred to as *The Fraud Triangle*, where the triangle is interconnected, as follows:

1. There is an incentive or pressure to commit fraud. This is often the result of pressure from superiors or high revenue targets.
2. There is an opportunity for fraud. Although the current system for preventing fraud in health facilities is still weak, perpetrators certainly have a great opportunity to commit fraud in the implementation of the JKN. This is due to the fact that only administrative sanctions are imposed if fraud is proven, so perpetrators are not deterred.
3. The existence of rationalisation or justification. If cheating is done for rational reasons or out of habit, the perpetrator naturally thinks that it is normal and reasonable to do so. This is especially true in cases of cheating related to health services.

If we look at the three factors in *The Fraud Triangle*, there are certainly many motives and methods that fraudsters can use to carry out their actions. If we look at the types of

fraud in Permenkes 16 of 2019, the types of fraud are only outlined in Permenkes 16 of 2019, while the potential for fraud or losses in the JKN programme varies in practice with various intentions (*mens rea*) and *actus reus* in the field, so that the rules relating to the types of fraud for perpetrators are no longer relevant. If we consider the sanctions imposed by Permenkes 16 of 2019, it is stated that these sanctions are only administrative sanctions up to the revocation of licences. Furthermore, in Article 17 of BPJS Health Regulation Number 6 of 2020, the sanctions imposed on perpetrators of fraud from JKN participants are only in the form of administrative sanctions. The administrative sanctions contained in the Minister of Health Regulation and the BPJS Health Regulation are not sufficient to address the fraudulent acts committed by perpetrators. The administrative sanctions imposed on perpetrators of fraud are still relatively light, namely verbal warnings, written warnings, reimbursement of losses, and fines of 25% of the amount of reimbursement per type of fraud for the medium violation category and 50% of the amount of losses returned per type of fraud for the severe violation category, with a maximum of IDR 250,000,000.

Thus, further legal analysis needs to be conducted regarding sanctions and types of fraud that can be imposed on healthcare providers and JKN participants who are indicated to have committed fraud, as Minister of Health Regulation No. 16 of 2019 has not yet established strict rules regarding sanctions and types of fraud that continue to evolve. This study aims to systematically describe the legal responsibilities and law enforcement against the parties involved in cases of JKN healthcare fraud, as well as to provide recommendations for improvements in the legal and public policy framework to support the transparency and accountability of the JKN programme.

## METHOD

This study uses normative legal research, which focuses on how positive legal norms or standards are applied. The legal sources used in this paper include primary and secondary legal materials. Legislation constitutes primary legal material, while literature on regional government law and legal journals related to the author's research topic constitute secondary legal material. The normative legal approach consists of the statute approach and the conceptual approach. Based on this, the assessment will be carried out with reference to legal sources, particularly legislation related to National Social Health Insurance, BPJS Health, and other regulations related to health services. The data collection technique used is a literature study. The data analysis technique used in this study will go through the stages of processing and analysis qualitatively. This analysis stage is a stage of critical thinking.

## ANALYSIS AND DISCUSSION

Ministry of Health Regulation No. 16 of 2019 concerning the Prevention and Handling of Fraud and the Imposition of Administrative Sanctions for Fraud in the Implementation of the Health Insurance Programme Articles 6, 7 and 8 regulate law enforcement for fraud. Administrative sanctions may take the form of verbal warnings, written warnings, and/or orders to reimburse losses resulting from fraudulent acts to the aggrieved party.<sup>6</sup> Administrative sanctions may be followed by additional sanctions in the form of fines imposed on the injured party and may also be followed by the revocation of licenses in accordance with the provisions

<sup>6</sup>Andi Ashar, "Aspek Yuridis Penerapan Sanksi Administratif Bagi Pelaku Kecurangan (FRAUD) Dalam Program Jaminan Kesehatan Nasional", *Jurnal Hukum, Politik Dan Ilmu Sosial*, Vol. 1 No. 1 (2023), pg. 156–161. there is a risk in the form of fraud committed by unscrupulous persons.

of the legislation. The substance of the regulation governs administrative sanctions only and does not govern criminal sanctions.

In State Administrative Law, the imposition of administrative sanctions is the exercise of governmental authority, which derives from written and unwritten State Administrative Law regulations. According to J.J Oosternbrink, administrative sanctions are sanctions that arise from the relationship between the government and citizens and are enforced without the intervention of a third party, i.e. without the intervention of judicial power, but can be enforced directly by the administration itself. According to Mochtar Kusumaatmadja and Arief Sidharta, administrative sanctions, which can take the form of refusing to grant a licence after a temporary licence has been issued (reparatory) or revoking a licence that has been granted (repressive), are far more effective in forcing people to comply with the legal provisions governing business and industry and environmental protection than criminal sanctions.

Minister of Health Regulation No. 16 of 2019 states that administrative sanctions do not preclude criminal sanctions in accordance with the provisions of laws and regulations. This is in line with the opinion of Philipus M. Hadjon, that the joint application of sanctions between administrative law and other laws can occur, namely internal accumulation and external accumulation. The leniency of the sanctions imposed on perpetrators of fraud does not have a deterrent effect, so that incidents of fraud can be repeated and even begin to diversify in ways that are not accommodated by the provisions of Permenkes 16 of 2019.

Fraud is categorized as an act that is against the law, in the form of deception/cheating, committed intentionally and is a despicable act. Legal experts argue that such an act is considered a violation of the law and is punishable by criminal sanctions. An example of fraud committed by health facilities against JKN participants in medical services that still often occurs is when JKN participants do not receive all the medicines prescribed by doctors, so that JKN participants have to buy them themselves at pharmacies outside the health facility on the grounds that the medicines are not available. Legally, JKN participants are entitled to medication services in accordance with their rights as stipulated in Presidential Regulation No. 59 of 2024. Another example is when doctors at primary health care facilities (FKTP) refer JKN participants to secondary health care facilities (FKRTL) where the doctors work. If we look at this incident, it falls into the category of fraudulent self-referrals, where referrals are made to the same doctor at other health care facilities.

Conceptually, according to Soerjono Soekanto, law enforcement is an effort to create, maintain, and preserve peace in social interactions by harmonizing values within strong rules and manifesting attitudes and actions as a series of final stages of value implementation. However, law enforcement differs from the enforcement of justice in a material sense. Law enforcement can be associated with "law enforcement" in a narrow sense, while the enforcement of justice is part of law enforcement. In addition, in English there is a difference between the terms "court of law", which means a legal court, and "court of justice", which means a court of justice. In the same way, the US Supreme Court is referred to as the "Supreme Court". According to Soerjono Soekanto, the determining factors for the success of law enforcement are: legal factors, law enforcement factors, resource and facility factors, community factors and cultural factors.

Legal factors refer to all instruments, regulations, and norms that govern the behavior of individuals and institutions in a society. This includes laws, government regulations, court decisions, and recognized social norms. Based on their source, they are divided into substantive law, which is a guideline for society on what and how they should and should not behave, and procedural law, which regulates how to file, examine, decide, and implement decisions. The legal instrument in cases of fraud in JKN services is Minister of Health Regulation No. 16 of

2019 concerning the Prevention and Handling of Fraud and the Imposition of Administrative Sanctions for Fraud in the Implementation of the Health Insurance Programme. However, if analyzed, cases of fraud in the JKN are classified as acts that can be held accountable both civilly and criminally. As stated in Article 6(2) of PMK No. 16 of 2019, administrative sanctions do not preclude criminal sanctions in accordance with the provisions of laws and regulations. If we relate this to criminal law, the elements that can be included are the existence of an unlawful act (*actus reus*) and intent or deliberation (*mens rea*). Criminal acts in the Indonesian dictionary are defined as unlawful acts or criminal acts. For an act to constitute a criminal act, the Criminal Code requires that it be unlawful and wrong.<sup>7</sup>

In implementing fraud prevention and handling as well as the imposition of administrative sanctions for fraud in the implementation of the Health Insurance Programme, a Fraud Prevention and Handling Team has been formed at the national, provincial and district/city levels to prevent and handle fraud and impose administrative sanctions for fraud in the implementation of the Health Insurance Programme. In a joint effort to realise a JKN programme that is free from fraud, an anti-fraud ecosystem within the JKN programme is also being developed. The PK-JKN team consists of various elements, including the Ministry of Health, the Financial and Development Supervisory Agency (BPKP), the Corruption Eradication Commission (KPK), and BPJS Kesehatan. The PK-JKN Team has also been formed at the provincial and district/city levels, consisting of the District/City Health Office, BPJS Kesehatan, the Health Facility Association, the Health Facility Organisation, and other relevant elements. The responsibilities of the PK-JKN Team are to disseminate regulations and a culture oriented towards quality control and cost control, improve the culture of fraud prevention, encouraging the implementation of good organisational and/or clinical governance, detecting and resolving fraud, monitoring and evaluating, and reporting. However, PMK 16 of 2019 does not clearly regulate the division of functions and responsibilities, so that the tasks and responsibilities within the JKN PK Team cannot yet be carried out optimally. The support of the JKN PK Team is also very much needed in the prevention and handling of fraud. Intensive coordination and communication are needed within the JKN anti-fraud ecosystem, and law enforcement officials also need to be involved in the JKN PK Team.

Fraud can occur because the legal culture in Indonesia normalises it, with perpetrators of fraud feeling that they are not guilty and rationalising their actions, which may be caused by dissatisfaction with the claims payments they receive. For example, when perpetrators of fraud feel that the capitation/ INACBG rates are insufficient, so they try to prevent losses for the health facility where they work, even though the methods they use are against the law and constitute fraud. Fraud can also occur because the rules and sanctions imposed on perpetrators are not strict enough, leading them to commit fraud repeatedly, or because the fraudulent acts committed are not explicitly regulated in the rules. Therefore, there is a need to update Minister of Health Regulation No. 16 of 2019 on the Prevention and Handling of Fraud (fraud) and the Imposition of Administrative Sanctions for Fraud (fraud) in the Implementation of the Health Insurance Programme with the aim of filling legal gaps or voids related to criminal provisions to make them stronger must be accompanied by education and socialization of regulations and procedures for reporting fraud (fraud) to the wider community and updates on the types of fraud, as the intent or men's rea of fraud perpetrators in carrying out their actions and their methods are highly diverse and evolve with the times.

## CONCLUSION

<sup>7</sup>Solehuddin Solehuddin, "Urgensi Kriminalisasi Perbuatan Kecurangan (Fraud) dalam Pelaksanaan Program Jaminan Kesehatan di Indonesia", *Interdisciplinary Journal on Law, Social Sciences and Humanities*, Vol. 4 No. 1 (2023), pg. 55.

Collaboration with all parties is required to prevent and handle fraud in the JKN Program and to revise Minister of Health Regulation No. 16 of 2019 concerning the Prevention and Handling of Fraud and the Imposition of Administrative Sanctions for Fraud (FRAUD) in the implementation of the Health Insurance Programme, which is considered urgent, particularly in relation to more stringent sanctions and the division of tasks and responsibilities among PK JKN team members to ensure the optimal performance of PK JKN.

Regional leaders or key stakeholders, district/city/provincial health offices, health facility associations, health facilities and BPJS Kesehatan must ensure that claims submitted and paid are in accordance with the benefits received by JKN participants.

Ministry of Health Regulation No. 16 of 2019 concerning the Prevention and Handling of Fraud and the Imposition of Administrative Sanctions for Fraud in the Implementation of the Health Insurance Programme must be amended and strengthened. Stronger regulations will reduce the desire to commit fraud..

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