

The implementation of rights to achieve the patient second opinion for the member of national health insurance

M. Ikhsan Lukman

*Program Studi Magister Kenotariatan Fakultas Hukum Universitas Hasanuddin
Jln. PerintisKemerdekaan Km. 12, Makassar, Sulawesi Selatan, Indonesia.
E-mail: mikhsanlukman@gmail.com*

Slamet Sampurno

*Program Studi Magister Kenotariatan Fakultas Hukum Universitas Hasanuddin
Jln. PerintisKemerdekaan Km. 12, Makassar, Sulawesi Selatan, Indonesia.
E-mail: slametsampurno@yahoo.com*

Amir Ilyas

*Program Studi Magister Kenotariatan Fakultas Hukum Universitas Hasanuddin
Jln. PerintisKemerdekaan Km. 12, Makassar, Sulawesi Selatan, Indonesia.
E-mail: amirilyas@yahoo.com*

ABSTRACT

This research is empirical juridical research. The research material consists of the primary and secondary data. Primary Data are gained from research subject, whilst secondary data are obtained from document study, this research is analyzed with the qualitative method and explained descriptively. The research result is attained that the law protection design is given by RSUD Haji Makassar with determining the operational procedure standard of patient right poured forth in the Director SK Number 29.02.08 About The Patient Right and Family to consult about disease matter from patient to another doctor is a law protection form preventively which the accusation service and sigh from patient poured forth the Director SK Number 155/TU/RSUD/I/2016 related to the operational procedure standard (SPO) Handling Sigh/Accusation Customer, that SPO is a repressive law protection form. Right implementation obtains the second opinion in RSUD Haji Makassar is not well-implemented maximumly, it is caused by no BPJS Kesehatan regulation accommodating patient right to gain the second opinion.

Keywords: *Law Protection, Patient Right, Second Opinion, National Health Insurance, Implementation.*

INTRODUCTION

Health is the rights of all citizens and also as the public goods, egaliter social justice required the government to take the main responsibility to developed the most effective and efficient approach to mobilized the fund as needed for every citizen healthcare.¹ According to the resolution of World health assembly (WHA) in Geneva declared that every member country

¹Siyoto S, Supriyanto, (2015), *Kebijakan Dan Manajemen Kesehatan*, Yogyakarta : Penerbit Andi.

is immediately needs to develop the health funding system through the health social insurance mechanism to ensure the sustainability of the healthcare funding.² Article 34 paragraph 2 of the 1945 constitution of republic of Indonesia stated that the state has the obligation to developed the social assurance system for the whole citizen and empowering the weak and poor community based on the humanity.

Act Number 40 of 2004 on the system of national social assurance mandated that everybody has the rights of the social insurance to be able to satisfy their basic decent life needs and to develops their dignity in purpose to reach the realization of welfare, fair and prosperous Indonesian citizen. At 1 January 2014, to create the social justice as well as the health protection for the whole citizen, the government through the body of social insurance (BPJS) as the implementer of the program on national health insurance (JKN).

The benefits which is assured by the JKN program is comprehensive individual healthcare, including the service on health development (promotive), the disease prevention (preventive), medication ((curative) and rehabilitation (rehabilitative) and so for the medicine medical materials. The given of the benefits by using the funding and quality control service techniques (managed care).³ The healthcare services for every JKN member is implemented in a tiered way which is started from the first level health facilities, in terms if the member needs advance healthcare then it must be proved by medical indication, it will be referenced to the next level healthcare facility.⁴

The procedures implementation of reference system is clearly regulated under health ministry regulation No. 001 of 2012 on the individual healthcare references sytem. The insurance os BPJS will not bear the medical cost of JKN member if it is not following the procedure. The BPJS and government has a strong control in the development of services quality and efficiency.⁵ At the first implementation of JKN development experienced a lot obstacles, various interest is have not implemented fully along to fulfill the patient rights is have not be able implemented completely.

Hospital as the main axis of the healthcare implementation is must be proactive in order to reach the plenary services which provide the inpatient care, outpatient care and

²World Health Organization, (2005) , Fifty-Eighth World Health Assembly,World Health Assambly,Genevahttp://apps.who.int/gb/ebwha/pdf_files/WHA58REC1/english/A58_200R.pdf

³Putri A.E, (2014), *Paham JKN Jaminan Kesehatan Nasional*, Friedrich-Ebert-Stiftung, Kantor Perwakilan Indonesia.

⁴Peraturan Menteri Kesehatan No. 001 Tahun 2012 Tentang Sistem Rujukan Pelayanan Kesehatan Perorangan

⁵Thabrany H, (2015), *Jaminan Kesehatan Nasional* , PT Raja Grafindo Persada, Jakarta.

emergency care.⁶ The main actor on the function implementation of healthcare in the hospital consist from the doctors, a dentist, medical specialist, a specialist dentist which is in charge on running medicine practice as the main every aspect of the healthcare efforts.

Every doctors and dentist who are running their practice in Indonesia are required to have practice license.⁷ Other than that, on the implementation of doctor practices, a doctor or a dentist in terms on perform doctor practicing is required to following the standard of doctor or dentist services.⁸ Also respect and satisfy the patient rights. One of the patient rights which regulated under the Act Number 29 of 2004 on the Doctor practices article 52 letter b is

“a patient in achieve the services of doctor practices has the right to ask for the doctor or other dentist opinion”.

Similiarly regulated under the act Number 40 of 2009 on the Hospital in the article 32 letter h stated that :

“every patient has the rights to ask for a consultation concerning their disease to the other doctor who has the practice license (SIP) whether inside or outside the hospital”.

The standard of patient and family rights issued by the hospital accreditation committee (KARS) also regulated about the patient rights on gaining the second opinion, on the element assessment standard of patient and family rights part 2 (two) stated that the hospital supporting the participation of patient and family rights on the services process and also every hospital is required to make a policy/guidelines/operational standard in gaining the second opinion whether inside or outside the hospital.⁹

The understanding of Second opinion which is still on very lacking, create its less maximum implementation, the second opinion function for the hospital is huge, a hospital which has the regulation and establish the second opinion is able to minimize undesirable events concerning the patient health problem (malpractice), the hospital may give not only a good services, but also appropriate, it means that the hospital not only curing but also provide the services based on the patient demand.

Furthermore, the doctor who is in charge of a patient (DPJP) in the hospital, as the front line of the healthcare who has the direct connection with the patient, the second pinion

⁷Pasal 36, Undang-Undang Nomor 29 Tahun 2004 Tentang Praktik Kedokteran

⁸ Pasal 44, Undang-Undang Nomor 29 Tahun 2004 Tentang Praktik Kedokteran.

⁹ Sutoto, (2012), *Standar Hak Pasien Dan Keluarga*, Komisi Akreditasi Rumah Sakit.

may be able to give solution concerning the health problems which cannot be handle by a doctor, by implementing the second opinion does not mean that a doctor is not capable to do his duty as a doctor, but if a doctor give suggestion to a patient to looking for the second opinion it means that the doctor wanting the best healthcare for his patient, by not forcing especially looking for his own or the hospital advantages.

The importance of “second opinion” according to KARS was caused by the diagnosis mistake and the medical implementation differentiation by a doctor often occurred in the worldwide and the different opinion in medical treatment is the usual thing, other than that the second opinion is suggested if its concerning the life threat, the funding loss or the financial impact. Based on the patient and family rights, not all the doctor decision is able to asked for the second opinion, according to KARS several cases which was asked for the second opinion was :

- a. Surgery action, appendictomi, tonsilektomi, Caesar, etc.
- b. Long terms medication for more than 2 weeks, such as medcial treatment on long term TBC, long terms antibiotic, etc.
- c. Advise a very expensive drug, an expensive milk, a very expensive immunization

The second opinion implementation is the patient rights which required the hospital to provide it by making the standard operational as the policy in order to implement the activity which connected with the second opinion, so every problem which linked with the second opinion mus referring to the applicable law as well as established technical regulations.

The patient rughts to gain the second opinion is not only linked with the function of healthcare implementation which is regulated under the operational standard of the hospital, but the implementation of patient rights will be connected directly with the function of healthcare funding which is the responsibility of the BPJS particularly to the JKN member. This matter become important because the diagnostic mistake and the implementation differentiation in the doctor practice other than able to harm the patient also impact to the over utilization which derived the potential for more deficits of BPJS financial.

Problem Questions

- a. How is the law protection for the member of national healthcare insurance in gaining the second opinion in the hospital?
- b. How is the implementation of gaining the rights on second opinion for the member of national healthcare insurance?

METHOD

Types of Research

This research is an empirical juridical research, by analyzing law which concepted as the real action with direct descendance of spaciousness to get the primary data and supported with library conduct research.¹⁰The research scope including law identification and a law effectivity.

Types and legal material resources

The types and legal material resources on this research using a primary legal resource, which is a binding legal material resource which consist of relevant law regulation that has the connction with this research. A secondary legal resource is a material which provide an explanation for the primary legal resource. A secondary legal material which is used by the researcher is library conduct on consument protection also the books which linked with this research, the relevant result and the opinion of legal experts.

The technique of legal materials collection

This research using data from various resource which grouped into two parts which are primary and secondary data. Library research conducted with document study, which is research, analyze and combine the material which derived from written data on the book and regulation in aims to gain the relevant secondary data with problem research. The tools of primary data collection using an interview technique with open interview guidelines, the interview formed to get the data and explanation of the research title.

Data Validation

The technique on checking data validity used on this research is known as Triangulasi technique or known as doing a check or recheck which is an activity done by the researcher to do a check on the vaidity of data that gained by the trianggulasi researcher through the resource check, technique and time.

ANALYSIS AND DISCUSSION

¹⁰Soerjono Soekanto, (1982), *Pengantar Penelitian Hukum*, Jakarta: Penerbit Universitas Indonesia Press, cetakan 2014.

The law protection in gaining the second opinion for the national healthcare insurance member

Makassar regional public hospital (RSUD) as the accredited hospital by KARS, as one of the national reference hospitals has the regulation to accommodate the patient's rights to get the second opinion by issuing the director's letter of work document number 155/TU/RSUD/I/2016 concerning the patient and family rights while under Makassar RSUD with the document number 29.02.08 issued on 22 January 2016 concerning how to gain the second opinion surrounding Makassar RSUD. The regulation is the insurance for every patient to get complete information concerning health problems or medical options that will be undertaken by the patient.

The patient's effort to get an opinion from another doctor, whether inside or outside the hospital, is not only the responsibility of RSUD Haji Makassar to make and implement the policy, because today RSUD Haji Makassar in providing healthcare is not only based on hospital regulations but also refers to the regulation under BPJS.

According to the research results of the researcher, until today BPJS healthcare stated that it is not capable of accommodating the patient's rights to gain a second opinion. This matter was stated by the respondent, which is the verifier of BPJS healthcare of RSUD Haji Makassar, which stated that until today there is no regulation, whether from the health ministry or BPJS healthcare, that regulates the patient's rights in gaining a second opinion. The same thing is also justified by the head of the department on Quality Reference Assurance of BPJS healthcare in the branch of Makassar, which explained that the regulation concerning the patient's rights on gaining a second opinion is not provided by BPJS, every service that is assured by BPJS Healthcare is the service which accords with the line of tiered grooves.

Besides providing the policy of the operational standard concerning the patient's rights in gaining a second opinion, today RSUD Haji Makassar also provides the law protection on the rights violation or the dissatisfaction experienced by the patient while they are in medical treatment in RSUD Haji Makassar, whether for the outpatient or inpatient, by making the operational standard through the complaint services.

According to the main director's decree of RSUD Haji Makassar Number 155/TU/RSUD/I/2016 concerning the patient and family rights on the settlement of patient and family complaints. This operational standard is one of the commitment forms of management

in the RSUD Haji Makassar for the patient who is found the incompatibility between hope of the (which is the needs) costumer with the services that they gain.

The law protection is the effort to protect the interest of the JKN member in purpose to realize the assurance of rights satisfaction based on the law because those matter the establish of regulation which provide protecton to the whole Indonesian citizen without exception also to presenting the fair sytem which can be accessed by the people particularly for the member of healthcare insurance (JKN).

According to Philipus M. Hadjon, that there are two law protection media which are the media of preventive law, on this preventive law protection the law subject is provided with the chance to filed an objection or opinion before te government decree get the definitive form. The purpose is to prevent a dispute. The preventive law protection has a big means for the government action which based on the free action because with the existence of preventive law protection the government will be pushed to acts carefully in making a decision by consideration of discretion.

The operational standard of patient rights in gaining the second opinion in RSUD Haji Makassar give an opportunity to the patiend to consult about their health problem to the other doctor, whether in the RSUD Haji Makassar or other hospital, this matter is suitable with the law which provide the rights for the patient in determine the best healthcare for them self. Other than that, the operational standard also provide the protection of medical records secret of the patient, which is given if DPJP is the doctor outside the hospital. The implemntation is done by sign the statement letter of maintain patient confidentiality.

The law protection also gained by the doctor, by the form which is agreed by the doctor and patient then the doctor will be free from a charge if in the implementation of second opinion to the other doctor occurs the thing that disadvantage the patient, likewise for the doctor obligation to give healthcare services until the patient is heal, by signing the form then all the risk that will occurs will not be the responsibility of the first doctor.

The relation between a doctor and patient is a civil relationship which is based on the agreement. A patient check them self to a doctor to get cure and on the other hand a doctor have to do maximal to give treatment to the patient. This relation usually calls terapeutik relationship. Furthermore the role of the hospital to provide law protection is very needed, the development on medical world is very supporting the people health, it a must that the hospital provide law protection to the protection as it is.

Next is the repressive law protection, the purpose of repressive law protection is to dispute a settlement. Handling legal protection by the general courts and administration court in Indonesia is included in this law protection. The RSUD Haji Makassar already has the operational standard on handling the problem concerning the complaint and patient accusation, so when the dispute occurred, then the patient or doctor in charge of the patient will get accompaniment in the process of problem/complaint solving which occurred in the services process in RSUD Haji Makassar.

In the process of healthservices, the patient should be acknowledge as the subject which giving a big influence of the service end result. The fulfillment of the patient rights is the obligation of the hospital. Considering the patient satisfaction rate is become one of the benchmark of services quality and barometer in order to give protection to for patient. While the patient dissatisfaction is able to become the main base of lawsuits.

The differences in regulation between hospital and BPJS healthcare is not reflected the existence of norm sincronization in the process of regulation making by the BPJS healthcare, while in Indonesia is exist the regulation concerning the regulation form, which is made in order to realize the existence of the law and code of conduct in Indonesia. Act Number 12 of 2011 on the regulation form article 7 stated that :

“types and hierarchy of legislation consist of the 1945 constitution of Republic of Indonesia, the decree of people consultative assembly, act/government regulation in lieu o act, government regulation, president decree, province regional regulation and regency/city regional regulation”

The important of hierarchy in the making process of regulation according to stufenbau theory from Hans Kelsen.¹¹ Stated about the dynamic character from norm system, which is some law norm determine the way to form other law norm and for some level also determine the object of the law norm. the relation between the norms which is formed other norm is ppictured as subordination relation and subordinate, the higher norm is determine other norm formaton so it governing legal provisions as the levels of the norms, however if sees from the reality which is based on the research result showing that the regulation of health ministry Number 71 of 2013 on healthcare of national health insurance is not in line with the norm which regulated under act Number 29 of 2004 on the doctor paratices and act number 44 of 2009 on the hos[ital.. particularly for the patient to get the second opinion.

¹¹R. Muttaqin, (2011),*Teori UmumtentangHukumdan Negara*, Terjemahan dari buku Hans Kelsen, *General Theory*

The teachings about legal hierarchy according to BagirManan is contain several principle which is the lower level law regulation is must be sourced or had a law base from the law higher level, next the content or material charge of lower law regulation should not be distorted or contradicted with the higher law level, unless if the higher law is formed without an authority or included authority. Later it must be held a mechanism which is maintain and assure the agario principle is not contratdicts or violates.¹²

The rights implementation in gain the second opinion for the patient member of national healthcare insurance

RSUD Haji Makssar is the national reference and already gain its accreditation from the commission of hospital areditation (KARS), RSUD Haji Makassar expected to provide the plenary health services also able to accommodate every patient rights. One of the patient main rights which is the object of this research is the patient rights to ask for consultation concerning their disease to the other doctor who has the practice license (SIP) whether inside or outside the hospital.

Based on the research result concerning the implementation of patient rights to ask for the consultation regarding their disease to the other doctor, RSUD Haji Makassar is already provide the operational standard which listed on the director work letter with the document number 155/TU/RSUD/I/2016 on the patient and family rights while under treatment of RSUD Haji Makassar with the document number 29.02.08 issued in 22 january 2016 on how to get the second opinion surrounding the RSUD Haji Makassar. Acted as the reference every installation in order to give services for the patient to get the second opinion. According to the operational standard which means by consultation to the other doctor concerning their disease is the medic opinion which is given by the other doctor on the diagnose or therapy even medical recommendation of the patient disease, in purpose to give satisfaction for the patient in terms of services development. The aims of the operational standard namely:

- a. The fulfillment of patient and family rights concerning the patient disease
- b. To get the complete information about the patient disease and the medical option

The implementation od second opinion in RSUD Haji Makassar today is cannot be removed from the role of BPJS, this matter is caused by the differences on regulation between patient rights as the hospital patient which is regulated by the act number 44 of 2009 on the hospital, by the patient rights as the member of JKN which is regulated under the presidential regulation, the regulation of health ministry and BPJS. The lack of a common perception on the regulation and claim verification between the hospital, DPJP and BPJS put the patient as

¹²Bagir Manan, (1992), “*Dasar-DasarPerundang-undangan Indonesia*”, Jakarta :Penerbit IND-HILL.CO, p. 57-58.

the victim in the process of the health services. Concerning the implementation of patient rights as the member of JKN in gaining the second opinion, an interview with DPJP saying that :

“ by this time we never know that in the RSUD Haji Makassar is exist the operational standard about the second opinion, we never give operational standard because in the services process is done by how to care together which the process is done by the consultation system”

Based on the interview result with the BPJS verifactor in RSUD Haji Makassar concerning the patient rights on second opinion saying that :

“ the BPJS healthcare is not able to facilitate the patient demand to gain the second opinion, because this matter is included on the individual demand which outside the BPJS procedure”

The implementation process of health services for the member of BPJS nowadays is subjected under the regulation of BPJS healthcare, if the patient is not disposed to follow the procedure then the patient will be cost on the process of advance health services. This matter showing that BPJS cannot accommodate the patient rights to get the second opinion because the nonexistence of BPJS regulation on the patient demand procedure to get the second opinion..

Every hospital is expected to have the services quality that able to accommodate the patient rights, beside the services quality, the human resource on healthcare in terms of giving the health services also give significant influence on the hospital services quality, hospital as the health servicer which working together with BPJS is expected to be able provide maximal services, it is marked from the working agreement through the agreement on cooperation between the hospital and BPJS, it is expected so the patient member of JKN gain the benefits of halth insurance services.

The operational standard on the patient rights to get the second opinion is one of the policy that must be transmitted by implementing it maximally so the policy purpose is able to realize as well as able to give protection for the patient interest on the health services.

According to Mazmanian and Sabatir (in subarsono) there three variable groups which influences the success of policy implementation which are : the problem characteristic (tractability of the problems), the character of policy/regulation (ability of statue to structure implementation), and environment variable (nonstatutory variables affecting implementation). The first variable is problem characteristic which is the level of difficult tehncique from the problem is concerned, the difficultlevel on the patient rights implementation to get second opinion in RSUD Haji Makassar which is the main problem that the patient rights is not accommodated to get the second opinion by BPJS which impact to policy implementation that

has been regulated by the hospital, so the BPJS healthcare should make a new invention in accordance with the patient rights so the patient is able to get their rights completely and assure the operational standard that is made by the hospital is well implemented.

The second variable is the policy characteristic (*ability of statute to structure implementation*), which consists of the clear policy, it means that the more clear the policy it will be easy to implement because the implementor easy to understand and translate in the real action, in contrary the unclear provision will delivered a potential of distortion on the policy implementation.

The next variable is the environment of the policy (*nonstatutory variables affecting implementation*), the people economic social condition and the level of technology progress, an open and educated people relatively easy to accept the invent program compare to the closed or traditional people, likewise the progress of technology will help in the program implementation success, because the existence of modern technology then a program will be socialized and implemented by the help of modern technology.

The lack of people knowledge on gaining the second opinion which reflected from this research showing that the patient does not know about the right yet,. Next the commitment level and creativity of the implementor, in the end the commitment of implementor to realization the purpose which is listed on the policy is the crucial variable.

Apparatus executing implementor is required to have the skills in making the priority aim and next realizing the priority purpose. An implementor which is a doctor does not have the high commitment in satisfying the patient rights to get the second opinion, it is seen from the nescience of DPJP about the operational standard on second opinion which exist in RSUD Haji Makassar, how is it possible a doctor will implement a policy if the doctor himself does not know that in the institution where he is working exist the policy. According to the research result the writer take a conclusion that the rights implementation to gain the second opinion for the patient member of JKN is cannot be able to implemented, even the existence of operational standand concerning the patient rights to get the second opinion is only a form of formality in the hospital accreditation process.

CONCLUSION

According to the research result it can be concluded that :

1. The form of law protection which is provide by RSUD Haji Makassar by establish an operational standard on the patient rights to get second opinion as listed on the director working letter in document number 29.02.08 issued in 22 january 2016 concerning how to get the second opinion in RSUD Haji Makassar, its operational standard is the form of preventive legal protection which established in RSUD Haji Makassar, furthermore RSUD Haji Makassar also provide protection in handling the violation and dispute on patient complaint as listed on director working letter Number 155/TU/RSUD/I/2016 concerning the operational standard on settle the customer complaint, the operational standard is the repressive law protection form that applicable in RSUD Haji Makassar
2. The second opinion rights implementation in RSUD Haji Makassar is not maximally done, since there is no BPJS healthcare regulation which able to accommodate the patient rights on second opinion, further the commitment level of the doctor in providing the healthcare treatment for the patient is not maximal. The lack of profesionality, communiation and socialition particularly on the doctor who is in charge of the patient caused the operational standard on second opinion for the patient and family rights is only as the policy which cannot be implement, even it is only as the formality for the importance of hospital accreditation.

Bibliography

- Bagir Manan “*Dasar-Dasar Perundang-undangan Indonesia*”, Jakarta :Penerbit IND-HILL.CO,
- Bambang Sugono, (2015), *Metodologi Penelitian Hukum*, Rajawali Pers
- Lexy Moleong, (2011), “*Metodologi Penelitian Kualitatif*,” Bandung : PT. Remaja Rosdakarya,
- Putri A.E, (2014), *Paham JKN Jaminan Kesehatan Nasional*, Friedrich-Ebert-Stiftung, Kantor Perwakilan Indonesia.
- R.Muttaqin, (2011),*Teori Umum Tentang Hukum dan Negara*, Terjemahan dari buku Hans Kelsen, *General Theory of Law and State* (New York:Russel and Russel, 1971), Bandung, Nusa Media.
- Siyoto S, Supriyanto, (2015), *Kebijakan Dan Manajemen Kesehatan*, Yogyakarta :PenerbitAndi.
- Soerjono Soekanto, (1982), *Pengantar Penelitian Hukum*, Jakarta : Penerbit Universitas Indonesia Press, cetakan 2014.
- Sutoto, (2012), *Standar Hak Pasien Dan Keluarga*, Komisi Akreditasi Rumah Sakit
- Thabrany H, (2015), *Jaminan Kesehatan Nasional* , Kakarta : PT Raja Grafindo Persada.
- Asep Candra, (2013), *Pentingnya “second opinion” KeDokter Lain*, Health Kompas.Com

<http://health.kompas.com/read/2013/04/11/15573366/pentingnya.quotsecond.opinionquot.ke.dokter.lain>

Arnold S. Relman “*A second Opinion rescuing americashelath care*” Diakses di https://books.google.co.id/books?id=sT5TAhlpWAC&printsec=frontcover&dq=seCond+opinion+health&hl=id&sa=X&redir_esc=y#v=onepage&q=second%20opinion%20health&f=false