

Analysis of Breach of Contract Resolution in the cooperation agreement between Dr. Noesmir Baturaja Hospital and BPJS Kesehatan

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Abstract

Universal health coverage (UHC) remains a challenge for many countries worldwide. Achieving UHC is also one of the sustainable development goals (SDGs), which stipulates for good health and well-being. Indonesia's health coverage program, the National Health Insurance (JKN) program, is administered by the Healthcare and Social Security Agency (BPJS Kesehatan). National health insurance (JKN) is a social security program that administered by the Healthcare and Social Security Organizing Agency (BPJS Kesehatan). BPJS Kesehatan in implementing its program requires hospital as health facility providers. BPJS Kesehatan cooperation agreement with dr. Noesmir Baturaja Hospital will be analyzed. How was the cooperation agreement between dr. Noesmir Baturaja Hospital and BPJS Kesehatan in Prabumulih branch. What efforts were made by dr. Noesmir Baturaja Hospital and BPJS Kesehatan in overcoming breach of contract in the health insurance cooperation agreement? The research method was normative juridical and empirical juridical. The data were primary and secondary. Data was analyzed by qualitative legal analysis. Research and debate showed that cooperation agreement between BPJS Kesehatan and dr. Noesmir Baturaja Hospital did not include medical licensed (SIP). in the 2017-2018 Manuscript of Cooperation Agreement (PKS), resulting breach of contract. Previously, dr. Noesmir Baturaja Hospital has obtained approval from District Government Health Office and BPJS Kesehatan verification that doctor could work outside working hours. However, BPJS Kesehatan stipulated dr. Noesmir Baturaja Hospital must return all BPJS Kesehatan claim payments to resolve the breach of contract dispute.

There has been a breach of contract between dr. Noesmir Baturaja Hospital and BPJS Kesehatan, and dr. Noesmir Baturaja Hospital has the right to demand justice, Government regulations and policies must be evaluated and changed to maintain equality in the cooperation agreement between BPJS Kesehatan and Hospital.

I. Introduction

A person must be healthy not only physically, but also emotionally and socially in order to carry out daily life activities without any interference from illness. As stated in the 1945 Constitution, "Everyone has the right to live in physical and mental prosperity, to live and get a good and healthy living environment and has the right to obtain health services," which refers health as one of the elements of prosperity that must be achieved in accordance with the ideals of the Indonesian nation. The responsibility for providing adequate healthcare and public service facilities lies with the state, as stated in Article 34 paragraph (3).

The National Social Security System (SJSN) was the subject of Law No. 40 of 2004, which was passed to accomplish adequate healthcare and public service facilities. Everyone is required by law to participate in social security programs, and including health insurance through Social Security Organizing Agency (BPJS). PT Askes (Persero) was officially closed in 2011, and community healthcare insurance and social security programs were taken over by BPJS Kesehatan. This change was authorized by Law No. 24/2011 on BPJS.¹

Social Security Organizing Agency (BPJS) oversees the country's health insurance program as a public legal organization. Discussions of commercial actors, whether governmental or private, are inextricably linked to discussions of legal entities. Companies, businesses, state-owned enterprises (BUMN), cooperatives, importers, merchants, distributors, and others are defined as "business actors" in the Consumer Protection Law (UUPK) by Abdul Halim Barkatullah in his book Consumer Rights.² Government law creates BPJS to oversee the administration of social security services. It is possible to establish a new organizing body to correspond with the evolution of social security, and Law

¹ Susilo Handoyo and Muhammad Fakhri, "Efektivitas Hukum Terhadap Kepatuhan Perusahaan Dalam Kepesertaan BPJS Kesehatan," *Journal De Facto* 5, no. 1 (2018): 1-19.

² Abdul Halim Barkatullah, *Hak-Hak Konsumen* (Nusamedia, 2019).

No. 40/2004 on SJSN states that BPJS is a metamorphosis of the present social security organizing body.³

Hospitals are defined as health service facilities that provide inpatient, outpatient, emergency, and promotive, preventative, curative, rehabilitative, and/or palliative health services in accordance with Law of the Republic of Indonesia No.17 of 2023 regarding Health.⁴ Law 40 of 2004 on SJSN, as revised and formalized by Law 24 of 2011, provides the legal framework for BPJS Kesehatan to serve as the sole organizer of the JKN. According to that statute, BPJS Kesehatan is the sole executor institute that can organize JKN. In accordance with Article 34C line (1) of Law Number 24 of 2011, BPJS Kesehatan is designated as the sole JKN program maker responsible for organizing health services, payment claims, and health service management systems. This is further supported by Presidential Regulation Number 82 of 2018, which specifies that BPJS Kesehatan is the JKN executor institute authorized by the government.⁵

In principle, BPJS Kesehatan in organizing health services must cooperate with health facilities through a cooperation agreement. The implementation of cooperation is guided by an agreement that regulates the rights and obligations of each party and related regulations to ensure that the implementation does not violate the agreement.⁶ The process of implementing JKN there are several parties involved, BPJS Kesehatan as the organizing body, the Hospital as a health facility supports, and the community who have paid their dues as JKN participants. The relationship between the parties is are a relationship based on legal relations, civil law.

The laws governing the formation of obligations through agreements. All healthcare establishments are required to work together with BPJS Kesehatan in order to provide health services. We are following the letter of the law on BPJS as stated in Article 11, letter e of Law Number 24 of 2011: "BPJS Kesehatan in implementing Health Insurance makes an agreement with health facilities".⁷ Hospitals are defined as health service facilities that offer inpatient, outpatient, emergency, and comprehensive individual health services through promotive,

³ Asih Eka Putri, *Paham BPJS: Badan Penyelenggara Jaminan Sosial* (Friedrich-Ebert-Stiftung, Kantor Perwakilan Indonesia bekerjasama dengan Dewan Jaminan Sosial Nasional (DJSN), 2014).

⁴ Presiden RI, "Undang-Undang Republik Indonesia Nomor 17 Tahun 2023 Tentang Kesehatan," *Undang-Undang*, 2023.

⁵ Presiden RI, "Undang-Undang (UU) Nomor 24 Tahun 2011 Tentang Badan Penyelenggara Jaminan Sosial" (Jakarta, 2011).

⁶ Adi Jatmika, Rinitami Njatrijani, and Ery Agus Priyono, "Kajian Hukum Perjanjian Baku Antara Badan Penyelenggara Jaminan Sosial (Bpjs) Kesehatan Cabang Utama Semarang Dengan Fasilitas Kesehatan Tingkat Pertama (Klinik Mutiara Bunda)," *Diponegoro Law Journal* 6, no. 2 (2017): 1-11.

⁷ Presiden RI, "Undang-Undang (UU) Nomor 40 Tahun 2004 Tentang Sistem Jaminan Sosial Nasional," 2004.

preventative, curative, rehabilitative, and palliative health services in Article 1 of Law No. 17 of 2023. In addition, the organization of hospitals strives to facilitate public access to health services, as stated in Article 3 letter an of Law Number 44 of 2009 concerning Hospitals. As a legal entity (*rechtspersoon*), hospitals have both rights and responsibilities that are dictated by the law, unlike individuals (*persoon*) made up of persons (*natuurlijk persoon*).⁸ An agreement is defined as a binding act between two or more persons under the terms of Article 1313 of the Civil Code. When two or more parties engage in an action with the intent to create a legally binding contract, they are engaging in an act of law. Aside from the parties themselves, no third parties are bound by the agreement's legal ramifications, which are the goals of the parties. To see the agreement between BPJS Kesehatan and the Hospital, the author conducted research at dr. Noesmir Hospital in Baturaja. dr. Noesmir Hospital is the backbone of health support and health services for 10 (ten) Army units with more than 5,052 people since January 1, 2014 as BPJS patients, dr. Noesmir Hospital has established a cooperation agreement with BPJS Kesehatan since 2014. This cooperation agreement is valid for one year and can be extended.

Rights and responsibilities have been mutually agreed between BPJS Kesehatan and dr. Noesmir Hospital in their agreement. Both BPJS Kesehatan and dr. Noesmir Hospital are obligated to uphold and execute these mutually agreed upon rights and responsibilities. The agreement's legal effect is the parties' intent, which binds them to one another but does not bind any third parties. In light of the foregoing, the author intends to do make aresearch with the title of " **Analysis of Breach of Contract Resolution in the cooperation agreement between dr. Noesmir Baturaja Hospital and BPJS Kesehatan**" in order to delve further into the topic of legal protection.

The study research issues: (a) What is breach of contract form in the dr. Noesmir Baturaja Hospital and BPJS Kesehatan collaboration agreement? (b) How is dr. Noesmir Baturaja Hospital and BPJS Kesehatan cooperation agreement breach of contract settled?

The study (a) examines the types of breach of contract in dr. Noesmir Baturaja Hospital and BPJS Health's partnership agreement. (b) Determine how dr. Noesmir Baturaja Hospital and BPJS Health will resolve breach of contract in their cooperation agreement.

We explain various definitions connected to the title of this proposal to help comprehend the aim, discuss the problem, and avoid different interpretations: Cooperation agreements are anonymous, civil law-free contracts that exist in society. An actual collaboration agreement is based on Civil Code Article 1338. Article 1338 Paragraph (1) of the Civil Code states, "All agreements made legally shall apply as law." Thus, parties must uphold a good faith when

⁸ Hermien Hadiati Koeswadji, *Hukum Untuk Perumahsakitan* (Citra Aditya Bakti, 2002).

implementing the agreement. A good faith can be subjective or objective. The parties must believe in subjective good will when negotiating. The subjective good faith is founded on the negotiating partner's honesty hence it's called pre-contractual good faith. Objective intention is a good faith in contract execution.⁹

Legal Protection is a guarantee that every individual will be protected from interference that can harm their rights by government legal entities.¹⁰ Furthermore, the purpose of legal protection is to safeguard the public from corrupt officials who act arbitrarily and contrary to the rule of law, and to ensure that every individual is able to fully experience his inherent dignity. The following individuals have contributed to the body of knowledge that defines legal protection: For Satjipto Rahardjo, the purpose of providing legal protection is to ensure that victims of human rights violations may once again enjoy the full range of rights guaranteed by law.¹¹ According to Setiono, the purpose of legal protection is to establish social order and prevent the abuse of power by government officials who disregard the rule of law.¹² Muchsin, legal protection is an activity to protect a person by harmonizing the rules and values that exist in an attitude to create an orderly situation in social life.¹³

Legal protection is inseparable from all forms of rights owned by the community individually and legal protection must be properly guarded by the government. The government's actions in protecting these rights is manifested in the existence of laws and regulations that are made fairly, to ensure the protection of every consumer of services and goods and ensure the protection of other rights. There are two distinct kinds of legal protection:¹⁴ (1) Legal safeguards that are oppressive. The purpose of repressive legal protection is to let the state's citizens resolve disputes in a fair and certain manner. (2) Legal protection for prevention. The state gives citizens a chance to voice their concerns or thoughts before making a legally binding decision, this is known as preventive legal protection. Therefore, the state must provide legal protection to all citizens, because legal protection will give birth to the protection of human rights in their form as individual and social beings. Legal protection will ensure the establishment of common welfare. A

⁹ Risti Dwi Ramasari, Intan Nurina, and Reza Uyundoya, "Gugatan Wanprestasi Terhadap Tunggalan Pembayaran Barang Farmasi Kepada Perusahaan Distributor Farmasi (Studi Putusan Nomor 15/Pdt.Gs/2022/PN.Tjk)," *JURNAL RECTUM: Tinjauan Yuridis Penanganan Tindak Pidana* 5, no. 1 (2023): 1164-77.

¹⁰ Philipus M Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia: Sebuah Studi Tentang Prinsip-Prinsipnya, Penanganannya Oleh Pengadilan Dalam Lingkungan Peradilan Umum Dan Pembentukan Peradilan Administrasi Negara* (Bina Ilmu, 1987).

¹¹ Satjipto Rahardjo, *Sisi-Sisi Lain Dari Hukum Di Indonesia* (Penerbit Buku Kompas, 2003).

¹² Jurnal Hukum Setiono, "Rule of Law (Supremasi Hukum)," *Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret, Surakarta*, 2004, 3.

¹³ Muchsin, *Perlindungan Dan Kepastian Hukum Bagi Investor Di Indonesia* (Surakarta: Surakarta: Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret, 2003).

¹⁴ R Subekti, *Hukum Perjanjian Cet. 10*, Jakarta: Intermasa, 2002.

dispute is a problem between two people where both of them dispute a certain object, this occurs due to differences in opinion or perception between the two which then causes legal consequences for both of them.

Alternative Dispute Resolution: Negotiation is a process of communicating with each other to seek a shared understanding when the other party is driving too much; by using diverse procedures, techniques, and abilities, an independent third party acts as a mediator to help parties negotiate a conflict. The mediator cannot make binding decisions, although the parties are urged to do so. A peace deed between the disputing parties is the settlement. Using diverse procedures, techniques, and talents, an independent third party acts as a conciliator (mediator) to help disputing parties negotiate their disputes. The conciliator has the authority to make advisory decisions; Inquiry is a dispute resolution process that gathers the facts that led to the dispute, the circumstances at the time of the dispute, and the type of dispute that occurred to arrive at a single version of the dispute; The inquiry is conducted by an independent inquiry commission whose members are appointed by the parties to the dispute. Advisory decision is not binding on parties; Arbitration is a legal action in which one or more parties submit their dispute to one or more arbitrators, usually a panel of professional expert arbitrators who act as private judges / courts and apply state law or peace procedures that the parties have mutually agreed upon to reach a final decision.¹⁵

2. Research Method

The research will employ normative legal and empirical problem approaches. The normative juridical research uses a literature study (Library Research) on theoretical concerns, analyzing legal principles in scholars' theories and applicable laws and regulations.¹⁶ Empirical research involves directly monitoring the **Analysis of Breach of Contract Resolution in the cooperation agreement between Dr. Noesmir Baturaja Hospital and BPJS Kesehatan**

The research data includes: secondary data, including primary, secondary, and tertiary legal materials, are gathered from literature studies and scientific works connected to study concerns. Primary data from direct observation and interviews on the Cooperation Agreement between dr. Noesmir Baturaja Hospital and BPJS Kesehatan: Analysis of Breach of contract Settlement.

The following data collection processes were used to complete the testing of the research results: Databases from libraries and archives, as well as data collected in the field. In field research, there are two main methods for collecting data:

¹⁵ Muhammad Abdulkadir, *Hukum Perdata Indonesia*, Bandung: Citra Aditya Bakti, 2000.

¹⁶ M P P Sugiyono, "Metode Penelitian Kualitatif, Dan R&D," in *Cet. Vii* (Bandung: Bandung: Alfabeta, 2009).

- a) Observation, direct observations in accordance with the problems at dr. Noesmir Baturaja Hospital.
- b) Interview, interviews were conducted:
 - 1. dr. Noesmir Baturaja Hospital : 2 People
 - 2. BPJS Health Prabumulih Branch : 1 Person
 - 3. Civil Law Lecturer at Bandar Lampung University : 1 Person
 - Total : 4 people

Data processing facilitates problem-specific data analysis. Data processing includes checking, classifying, and systematizing. The data are collected from literature and field studies, connected to existing literature and theories, and analyzed qualitatively juridically by describing problems based on research and discussion in the form of explanations or sentences arranged systematically. After examining the data, the conclusion is deductive, based on general facts, and then a specific conclusion about the problem is made from the research results.

3. Results and Discussion

Forms of breach of contract in the Cooperation Agreement between dr. Noesmir Baturaja Hospital and BPJS Health

Breach of contract occurs when one of the parties to the agreement between the creditor and the debtor does not fulfill or neglects to carry out the obligations of the other party as stated in the agreement. There are two distinct kinds of breach of contract under the United States Restatement of Contracts Law: complete breaches and partial breaches. When one party completely violates the contract, it becomes impossible to carry out the terms of the agreement; yet, when one party partially breaches, it is still feasible to do so. Meanwhile, a creditor or bailiff must serve a summons on the debtor before he is considered to be in breach of contract. The four repercussions of breach of contract are:

- a. The responsibility persists. If the debtor is late, the creditor can still demand performance. Additionally, the creditor might seek reimbursement for performance delays. The creditor benefits if the debtor performs on time.
- b. According to Article 1243 of the Civil Code, the debtor must compensate the creditor.
- c. If a barrier occurs after a debtor breach of contract, the weight of risk shifts to the debtor, unless the creditor shows purpose or gross error. Thus, force majeure is unjustified by the debtor`.

- d. If the obligation stems from a reciprocal agreement, the creditor might avoid providing a performance contract by referring to Article 1266 of the Civil Code.

Based on the results of interviews with the Hospital dr. Noesmir Baturaja:

Based on an interview with Sandra Turisia, the Casemix Member of the dr. Noesmir Baturaja Hospital, we learned that the issue with the breach of contract Resolution in the Cooperation Agreement between the two organizations began with a disagreement over a SIP that wasn't part of the 2017-2018 PKS between the two organizations. However, at that time the hospital had obtained approval from the local District Government Health Office and the BPJS Kesehatan verifier that dr. RS could use a Work Permit Outside Office Hours as a substitute for the SIP. According to the hospital management, they did not make a breach of contract because of the written approval from the District Government Health Office and the BPJS Kesehatan verifier regarding the Work Permit Outside Office Hours at that time. This is considered a sufficient basis to avoid allegations of breach of contract.

However, the settlement of the dispute over the breach of contract was the hospital management is required to return the claim funds for the cost of services performed by dr. RS from March 2017 to September 2018 which have been paid by BPJS Kesehatan previously amounting to Rp. 1,326,373,000, - The return of claims to BPJS Kesehatan has reduced the Hospital's overall income. This impact has led to a reduction in the planned purchase of medical products and equipment that are urgently needed by the Hospital.

The hospital management viewed this settlement as inappropriate. a refund of claims that have been paid was deducted from the services of the doctor concerned in installments from the services every month for 24 months from September 2021 to September 2023 amounting to 37.37% of the total refund, Rp. 495,550,031, - and deducted from the Hospital's claim to BPJS every caused further losses for the Hospital. Ms. Sandra Turisia added that the deduction of services made by the hospital to the doctor concerned was a form of responsibility of the hospital for the services provided while the capital costs of other services were the responsibility of the hospital.

New regulations from BPJS Kesehatan that apply retroactively also add to the complexity of this settlement, where drug services and consumables that have been used can no longer be billed to doctors or patients. As a follow-up effort, the hospital management had held intensive discussions from the operational to managerial level with BPJS Kesehatan to find a better and sustainable solution. Nonetheless, the challenge of resolving this dispute remains the hospital management main focus in maintaining the continuity of quality health services for the community they serve.

In the author's opinion, the problems that occurred due to the absence of SIP in dr. RS's practice indicate that the parties did not heed the applicable

regulations, Article 36 of Law No. 29 of 2004 on Medical Practice states that, in accordance with recommendations made by the Indonesian Medical Council, the Regional Government must issue a SIP to any doctor seeking to practice in the region. Article 24 of Law 44 of 2009 Relating to Healthcare Facilities: Every doctor who works in a hospital must have a SIP in accordance with statutory regulations.

For this reason, the author argues that as a result of a cooperation agreement that violates existing regulations, those who should be responsible are both parties, so that the hospital should take the path of arbitration or court action to get a fair settlement for both parties, and the burden of loss is not the responsibility of the hospital itself.

Based on the results of interviews with the Deputy of Law from BPJS Kesehatan Mr. Theo Suwanda said that the case that occurred between Dr. Noesmir Baturaja Hospital and BPJS Prabumulih in the 2017-2018 Cooperation Agreement related to the practice of dr. RS could not be said to be a breach of contract because there was no court decision in the case. According to the resource person, the signing of the audit results minutes and the subsequent refund of the BPJS Kesehatan claim constitute an agreement between the parties involved in the settlement process within the civil context of the cooperation agreement between dr. Noesmir Hospital and BPJS Kesehatan. This is due to the fact that the hospital is obligated to return any overpayments to BPJS Kesehatan in the event that they are proven to have been paid for incorrect claims or fraud, as stated in the PKS article. The settlement is not breach of contract solution of the problem SIP regulation was not well explained in the PKS of dr. Noesmir Baturaja Hospital with BPJS Kesehatan Prabumulih branche office in 2017-2018. The resource person stated that one of the principles of the agreement and one of the valid requirements of the agreement is the existence of a "halal" cause, so that even though it is not specifically stated in the PKS, it becomes a general norm and regulation that must be implemented. Regarding the agreement, there must be a good faith, this is shown in the way the hospital provides a refund. the resource person argues that the way of hospital refund to BPJS is precisely the good faith of the parties in resolving the problem. Because there is no lawsuit in the matter, so there is no language of contract in the matter. Regarding the settlement of the case, the resource person argued that there was breach of contract in the case, so there was actually no problem in the case, with the signing of the return minutes. Regarding lawful cause in the agreement, the source said that it must be determined by a judge, while the case that occurred never entered the court.

It is concluded that breach of contract, which is a violation or failure to fulfill the obligations agreed upon in a contract, does not always have to be established through a court decision. In general, breach of contract occurs when one party does not fulfill or violate the terms of the contract, such as not delivering goods or not making payments according to the agreement.

However, in order to claim damages or obtain legal sanctions for breach of contract, the aggrieved party often has to take the case to the court for an official ruling. A court ruling can provide clarity and legal certainty about whether a breach of contract has occurred, as well as determine the form of compensation or actions that must be taken by the breach of contracting party.

The court is not the only way to resolve breach of contract issues. Practically, it is often necessary to go to the court if there is a dispute between the parties regarding the breach of contract. Regarding the return of overpayments due to incorrect claims or fraud, it certainly cannot be equated with this case because the point of the problem is not fraud claim but an administrative error in the form of SIP which was actually known by both parties, but the loss was borne by only one party, the hospital. The resource person's opinion that the statement of breach of contract must be based on a court decision is contrary to the theory that the settlement of breach of contract can be done in various ways, depending on the situation and the provisions agreed upon by the parties to the agreement. Some common methods of breach of contract resolution include:

1. Negotiation, the parties involved in a contract may try to resolve the dispute through direct negotiation. Negotiation allows both parties to reach an agreement that is favorable to both parties without involving a third party.
2. Mediation, a third party acts as an impartial facilitator to help the disputing parties settle their differences. Instead of making a final decision, the mediator's role is to facilitate the parties' search for a solution that works for everyone involved.
3. Parties can settle their disagreement through arbitration, which entails submitting the matter to a neutral third party with the authority to make a legally enforceable ruling. Since arbitration is a private and expedited alternative to litigation, it is frequently preferred.
4. The Court System Both sides have the option to go to court if they are unable to resolve the matter through negotiation. The court will decide if a party has breach of contracted and, if so, will assess damages or take any other appropriate action.

Based on the results of interviews with Mrs. Yulia Hesti as a Lecturer in Civil Law at Bandar Lampung University. She conveyed about the problem of the Cooperation Agreement between dr. Noesmir Baturaja Hospital and BPJS Health which contained breach of contract after reading and listening to the chronology of events. She stated that as long as the SIP in question was not stated in the cooperation agreement between dr. Noesmir Baturaja Hospital and BPJS Kesehatan Prabumulih branch office could not be as a breach of contract. An addendum should have been made to the Cooperation Agreement that had been made. Even though it doesn't break any laws, the cooperation agreement breaches Article 1338 of the Civil Code, Paragraph (3), which states that everything must be

done in a good faith for the agreement to be implemented. This is because both sides have been aware of the Ogan Komering Ulu (OKU) Regency District Government Health Office's Letter of Permission to Work Outside of Official Hours for some time.

According to Regulation of the Minister of Health of the Republic of Indonesia Number 71 of 2013 on Health Services on National Health Insurance Article 6, the following selection and credentialing requirements apply: (1) Article 5 paragraph (1) requirements for first-level health facilities include: The profession of medicine or dentistry requires:

1. Medical licensed
2. Taxpayer Identification Number (NPWP)
3. Collaborations with labs, pharmacies, and networks;
4. A commitment to follow JKN requirements.

The 2017-2018 Cooperation Agreement between BPJS Kesehatan Prabumulih branch office and Dr. Noesmir Baturaja Hospital, there was a bad faith in accordance with KUHPer 1338 that: Agreements must be carried out in a good faith.

Explanation of Article 1338 of the Civil Code:

Paragraph (1) : An agreement entered into by the parties legally and by free agreement binds the parties like a law. This means that the agreement must be obeyed and executed properly by both parties who have agreed to it.

Paragraph 2: No party may unilaterally terminate or alter this agreement after its conclusion. Cancellation or amendments can only be performed with the consent of all parties concerned or in accordance with legal requirements.

Paragraph 3: The implementation of the agreement must be done in a good faith. This means that the parties involved in the agreement must act honestly, respect each other, and carry out the agreement in accordance with what has been agreed without any intention to harm the other party.

The absence of SIP in the cooperation agreement between dr. Noesmir Baturaja Hospital and BPJS Kesehatan Prabumulih branch office cannot be categorized as a breach of contract if the initial agreement does not include these provisions. An additional or addendum is necessary to incorporate new requirements or circumstances in compliance with relevant regulations, serving as a remedial measure. Implementing the agreement in a good faith violates Article 1338 Paragraph (3) of the Civil Code, even though the agreement itself does not violate Article 1320 of the Civil Code. This is due to a discrepancy in the implementation of the agreement related to the Work Permit which had been known by both parties. The Agreement must comply with the requirements set out in the Minister of Health Regulation, license, as well as an affirmation that you will follow the rules that was set down by the National Health Insurance Act. Non-compliance with these requirements indicates a problem in the implementation of the agreement. Therefore, to resolve this issue, it is necessary to evaluate and

renew the agreement by ensuring that all provisions are in accordance with the regulations and must be implemented in a good faith by both parties. Dispute Resolution If There is Breach of contract breach of contract in the Cooperation Agreement Between dr. Noesmir Baturaja Hospital and BPJS Kesehatan

Based on the results of interviews with Mr. Rezky S. Girsang as Head of the TK III dr. Noesmir Baturaja Hospital who stated that: The District Government Health Office issued a letter to work outside of official hours for the doctor concerned, the letter was reported to BPJS Kesehatan Prabumulih branch office and approved by BPJS Kesehatan Prabumulih branch office as evidenced by the name of dr. RS on BPJS Health Facilities Informatin System (HFIS) besides that BPJS Kesehatan Prabumulih branch office has also carried out credentials to the Hospital twice before the statement of breach of contract from the BPJS internal audit results. From the results of the BPJS Internal audit, dr. Noesmir Baturaja Hospital is required to return the disbursed claims. The hospital clarified the OKU district government health office which had issued a Certificate of Working Outside Office Hours on behalf of dr. RS and had an audience with the Regent OKU district about the problem because there had been services to the people of OKU district. In addition, the hospital held an audience with the head of BPJS OKU and BPJS Palembang Region about the problem.

However, the hospital was remain declared as breach of contract for employing doctors who practice without a SIP, with the return mechanism starting with the signing the record of refund. Return on September 25, 2019 with a payment mechanism through BPJS Kesehatan late fees to the hospital in September 2019, January 2020 and February 2020 with a value of IDR 213,421,300. Furthermore, because BPJS Kesehatan payments were smooth and there were no delays that resulted in fines, it was agreed again on December 27, 2021 that the refund would be made in stages with a 5% deduction from the results of BPJS Kesehatan verification of the dr. Noesmir Hospital claim submission which was started in September 2021 and finished in September 2023. Even though hospital had returned the funds requested by BPJS, dr. Noesmir Hospital management remains firm in his stance that hospital has not made a breach of contract considering that the Hospital has received approval from the District Government Health Office and the BPJS Kesehatan verifier for the Work Permit Outside Office Hours . It is concluded that all dentists and medical doctors in Indonesia are required by Law No. 29 of 2004 on Medical Practice, Article 36, to either hold a valid license to practice or to have a letter of assignment from the Province Government Health Office, rather than the District Government Health Office. The issuance of a Letter of Assignment from the Province or District Government Health Office is stated in Permenkes Number 2052 of 2011 which allows specialist doctors to serve in many places to meet the ratio.

It is found in Article 15 of Permenkes No. 2052/2011 which reads as follows:

- (1) On the request of the Head of the District Government Health Office, the Head of the Province Government Health Office on behalf of the Minister may grant a letter of assignment to specialist doctors or dentists who already have a SIP to work in certain health service facilities or hospitals without a SIP to meet medical service needs.
- (2) The paragraph (1) letter of assignment can only be granted in locations without expert doctors to provide the same health services.
- (3) The letter of assignment in paragraph (1) is valid for one year.
- (4) Upon Minister agreement, the Head of the Province Government Health Office may extend the Letter of Assignment mentioned in paragraph (3).
- (5) The Head of the District Government Health Office must balance service demands and specialty doctor or dentist skills when requesting a Letter of Assignment.
- (6) The Head of the District Government Health Office, the local relevant Professional Organization, and the local hospital association agree on the balance between service needs and the ability of specialist doctors or dentists.

The Permenkes can be an answer to the concerns of doctors who want to carry out assistance tasks in areas that really need specialists, while the number of specialists in the area is lacking. Hospitals only need to submit an application to the Province/District Government Health Office, in the form of a Letter of Assignment to a doctor that can be used for one year and can be extended again.

The issue of imbalance in cooperation agreements between BPJS Kesehatan and hospitals is often a significant issue. Some relevant regulations in this context include:

1. Law No. 24/2011 on the BPJS. This law regulates the establishment and functions of BPJS, including BPJS Kesehatan. In the context of agreements with hospitals, BPJS Kesehatan is responsible for establishing cooperation with health facilities (faskes) that meet the specified requirements.
2. Regulation No. 12/2013 of the President Concerning Health Insurance The JKN, which is overseen by BPJS Kesehatan, is further elaborated upon in this legislation. Hospital and other health facilities are required to work together with BPJS Kesehatan according to the terms of this rule.
3. Health Services in the JKN Program, Ministerial Regulation No. 71/2013. The services and prices offered by medical centers that work with BPJS Kesehatan are governed by this Permenkes. The collaboration's rights and responsibilities are spelled forth in this regulation as well.
4. Health Minister's Regulation No. 99/2015 Regarding Health Service Tariffs in the JKN Program's Implementation. This Permenkes stipulates the service rates that can be provided by hospitals that work with BPJS Kesehatan. This regulation is often a source of imbalance because hospitals feel that the set tariffs do not reflect the actual costs.

Regulations and policies need to be continuously reviewed and adjusted to ensure equality in cooperation agreements between BPJS Kesehatan and hospitals, and avoid monopolistic practices or imbalances that harm one party. Indeed, BPJS Kesehatan's status as the sole organizer of national health insurance can impact the imbalance in the collaboration agreement with hospitals.

The imbalance in the cooperation agreement between BPJS Kesehatan and hospitals is a complex issue and requires a multifaceted approach to create a more fair and balanced cooperative relationship. Hospitals can form an associations or coalitions to increase their bargaining power in negotiations with BPJS Kesehatan. Increasing hospitals' bargaining power in collaboration with BPJS Kesehatan, even though BPJS Kesehatan is the sole provider of the JKN, can be done through various approaches, including through regulatory changes and implementation of other strategies. Here are some steps that can be considered:

1. Revision of the BPJS Law. Revise Law No. 24/2011 on the BPJS to create a fairer framework for all parties. Revisions could include establishing a more transparent and participatory mechanism in determining tariffs and terms of cooperation.
2. Anti-Monopoly Law. If we want to see an end to monopolistic activities that hurt hospitals, we need to make sure that Law No. 5, from 1999, prohibits such acts and unfair business competition.
3. Tariff and Claims Regulation. Develop regulations that ensure fair tariff setting and efficient claims processes, possibly through Minister of Health Regulations or Presidential Regulations.
4. Establishment of Hospital Associations. Form an association or coalition of hospitals to strengthen their collective bargaining position. This association can serve as a platform for joint negotiations with BPJS Kesehatan, as well as advocacy for policy changes.
5. Improved Transparency and Accountability. Encourage BPJS Kesehatan to be more transparent in the process of setting tariffs and evaluating hospital performance. Hospitals can also advocate for BPJS Kesehatan to implement a stronger accountability system in claims management.
6. Use of Data and Analysis. Collect and analyze operational and financial data to show the true cost of health services provided. This data can be used as the basis for strong arguments in tariff negotiations with BPJS Kesehatan.
7. Lobbying and Advocacy. Lobbying the government and legislature to address the interests of hospitals within the JKN framework. This advocacy can include emphasizing the importance of fair tariffs and timely payment of claims.
8. Partnership with Private Sector. Enhance cooperation with private health insurance to diversify revenue sources and reduce complete dependence on BPJS Kesehatan.

Changing the laws is one way to improve hospitals' bargaining power, but this approach is a relatively long and complex process. Therefore, incorporating other strategies such as the formation of associations, increased transparency, use of robust data, and active advocacy can be effective measures that can be taken alongside regulatory change efforts.

It is concluded that hospital is not the only one made breach of contract, but BPJS is also responsible. Therefore, the losses should not be borne by one party only, but also by both party. This breach of contract arises from a mismatch between the approval given and the applicable legal provisions, regarding the SIP and Letter of Duty involving the hospital, doctor, OKU District Government Health Office and BPJS Kesehatan Prabumulih branch office. in order to resolve the dispute, the Hospital can take legal action for justice, thus losses are not only borne by one party. Unfairness and inequality occur due to BPJS Kesehatan is remain the exclusive health insurance provider in Indonesia, and hospitals have little leverage in negotiating the content and implementation of the Cooperation Agreement between the two parties.

4. Conclusion

The collaboration agreement between dr. Noesmir Baturaja Hospital and BPJS Health is in breach of contract due to non-compliance with legal requirements, particularly addressing the doctor's SIP.

The attempts to address the breach of contract in the cooperation agreement between dr. Noesmir Baturaja Hospital and BPJS Kesehatan had been inadequate. The Hospital should pursue legal recourse as a means to achieve justice and ensure that the losses are not solely borne by one party.

Suggestion

Taking into account the above conclusions, the suggestions that can be put forward include:

1. As the sole supplier of JKN, BPJS Kesehatan has significant negotiation leverage over hospitals. This may cause cooperation agreement imbalances because hospitals have few other options to join the national health insurance scheme. The government should offer Indonesians healthcare options outside BPJS Kesehatan.
2. Government regulations and policies need to be continuously reviewed and adjusted to ensure equality in cooperation agreements between BPJS Kesehatan and hospitals, as well as to avoid monopolistic practices or imbalances that harm one of the parties.

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